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APPENDIX

FILED
JUN 11 1971
E. ROBERT SEAVER, CLERK

Supreme Court of the United States

OCTOBER TERM, ~~1970~~ 1971

No. ~~1096~~ 70-5039

MARGARITA FUENTES, ET AL.,
Appellants,

—v.—

ROBERT L. SHEVIN, ATTORNEY GENERAL,
STATE OF FLORIDA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED OCTOBER 22, 1970
PROBABLE JURISDICTION NOTED FEBRUARY 22, 1971

Supreme Court of the United States

OCTOBER TERM, 1970

No. 6060

MARGARITA FUENTES, ET AL.,

Appellants,

—v.—

ROBERT L. SHEVIN, ATTORNEY GENERAL,
STATE OF FLORIDA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

INDEX

MARGARITA FUENTES, individually and as a class for all those similarly situated, APPELLANT

—vs—

ROBERT SHEVIN, Attorney General for the State of Florida, and FIRESTONE TIRE & RUBBER COMPANY, APPELLEES

DESIGNATION OF RELEVANT DOCKET ENTRIES

November 20, 1969, plaintiff-appellant FUENTES' complaint for declaratory and injunctive relief filed in the United States District Court for the Southern District of Florida.

December 11, 1969, motions to dismiss and to strike filed by defendants PURDY and WILLIAMS.

December 15, 1969, defendant FAIRCLOTH's motion to dismiss filed.

December 30, 1969, appellant's amended complaint for declaratory and injunctive relief filed.

January 19, 1970, appellant's motion for summary judgment filed.

January 28, 1970, defendant FAIRCLOTH's motion to dismiss amended complaint filed.

February 9, 1970, order setting hearing on three judge jurisdiction and all pending motions for March 12, 1970.

February 24, 1970, appellant's motion for a leave to amend complaint and to join additional party-defendant filed.

March 13, 1970, appellant's second amended complaint for declaratory and injunctive relief filed.

Designation of Relevant Docket Entries

March 17, 1970, order entered granting appellant leave to amend complaint and to add FIRESTONE TIRE & RUBBER COMPANY as an additional party-defendant, dismissing defendants PURDY and WILLIAMS, denying defendant FAIRCLOTH's motion to dismiss, and denying without prejudice, appellant's motion for summary judgment.

April 6, 1970, defendant-appellee FIRESTONE's motion to dismiss second amended complaint and to strike filed.

April 9, 1970, defendant FAIRCLOTH's answer to second amended complaint filed.

April 30, 1970, appellant's renewed motion for summary judgment filed; stipulation of facts also filed (with all attached exhibits).

May 5, 1970, order entered denying FIRESTONE's motion to dismiss, granting FIRESTONE's motion to strike all references to a class action, holding appellant's renewed motion for summary judgment in abeyance and setting the cause for taking of testimony on May 22, 1970.

May 14, 1970, appellant's motion to modify order of May 4, 1970 filed.

May 21, 1970, FIRESTONE's answer to second amended complaint filed.

June 1, 1970, affidavit of Vincent G. Morgan in opposition to renewed motion for summary judgment filed by FIRESTONE.

August 21, 1970, opinion of the District Court entered denying the declaratory and injunctive relief sought by appellant and granting judgment to defendants-appellees.

September 9, 1970, final judgment entered for defendants-appellees.

September 29, 1970, appellant's notice of appeal filed.

Designation of Relevant Docket Entries

March 11, 1971, transcript of hearing on May 22, 1970 filed (with stipulation and evidentiary exhibits in inside cover of Court file):

/s/ Bruce S. Rogow, Esquire
Counsel for Margarita Fuentes, Appellant
622 N. W 62 Street
Miami, Florida 33150

/s/ Daniel S. Dearing, Esquire
Counsel for The Honorable Robert L. Shevin, Appellee

/s/ George W. Wright, Jr., Esquire
Counsel for Firestone Tire & Rubber Company, Appellee

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 69-1359-Civ-WM

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFFS

vs.

EARL FAIRCLOTH, Attorney General for the State of Florida, E. WILSON PURDY, Sheriff of Dade County, Florida, and R. A. WILLIAMS, a Deputy Sheriff of Dade County, Florida, DEFENDANTS

AFFIDAVIT—Filed January 19, 1970

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

BEFORE ME, a Notary Public, duly authorized to administer oaths and take acknowledgments, personally appeared MINNIE R. BURROWS, who, after first being duly cautioned and sworn, deposes and says:

1. That she is a legal secretary employed by E.O.P.I. Legal Services at 400 Northwest 5th Street, Miami, Florida.

2. That on January 14, 1970, she called the following bonding organizations in the City of Miami, Florida and asked for a quotation on a forthcoming bond in double the amount of the replevied property, to wit: $408.10:

a) A B C Bonding & Insurance Co.
1674 Northwest 17 Avenue

b) Maynard Bonding or Ace Bonding Co.
17 Northwest Miami Court

c) All Courts Bonding Service
Dade-Commonwith Building

d) All Dade Bail Bonds
1342 Washington Avenue

e) Hoskins Bonding Agency
742 Northwest 12th Avenue

f) Flowers Bail Bonds
3372 Northwest 17th Avenue

g) Curry Charlie Bail Bond
1404 Northwest 7th Avenue

h) Assured Bonding Service
2020 Southwest 1 Street

i) A-1 Bail Bonds
1481 Northwest 7th Street

j) A & A Bonding Agency
1575 Northwest 14th Street

k) All Florida Bonding
201 Northwest 14th Avenue

l) Tracy C. Bonding Agency
740 Northwest 12th Avenue

3. That of those companies called, only two (2) handled forthcoming bonds for the purposes of a replevin proceeding, to wit:

a) Maynard Bonding or Ace Bonding Co.
17 Northwest Miami Court
Miami, Florida

b) Hoskins Bonding Agency
742 Northwest 12th Avenue
Miami, Florida

4. That for a forthcoming bond in the amount of $408.10, Maynard Bonding Company required $408.10 in cash, plus a twenty dollar ($20.00) premium.

5. That Hoskins Bonding Agency required $204.05 in cash, plus a ten dollar ($10.00) premium for a forthcoming bond in the amount of $408.10.

6. That for a bond in the same amount Maynard Bonding Company would charge only ten dollars ($10.00) if the affiant herein were a plaintiff rather than a defendant in a replevin proceeding.

7. That for a bond in the same amount Hoskins Bonding Agency would charge only ten dollars ($10.00) if the affiant herein were a plaintiff rather than a defendant in a replevin proceeding.

/s/ Minnie R. Burrows
MINNIE R. BURROWS
Affiant

Sworn to and Subscribed before me this 16th day of January, 1970.

/s/ Mark E. Polen
Notary Public, State of Florida at Large

My Commission Expires:

Notary Public State of Florida at Large
My Commission Expires Feb. 9, 1973
Bonded Thru Fred W. Diestelhorst

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 69-1359 Civ-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFFS

vs.

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE & RUBBER COMPANY, DEFENDANTS

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF—Filed March 13, 1970

I. JURISDICTION

1. This is an action brought by plaintiffs for declaratory judgment and for permanent injunction as authorized by Title 42, U.S.C. § 1983 and Title 28, U.S.C. §§ 2201 and 2202. The jurisdiction of this Court is invoked under Title 28, U.S.C., § 1343(3). This is a proper case for determination by a three judge court pursuant to Title 28, U.S.C. §§ 2281 and 2284 in that it seeks a preliminary and permanent injunction, restraining and enjoining the defendants from the enforcement and execution of Chapter 78 of Florida Statutes §§ .08, .10, .11, and .12, and pertinent parts of § .01, on the ground that said statutes are violative of the Fourth and/or Fourteenth Amendments of the United States Constitution.

2. This is a class action authorized by Rule 23(b) of the Federal Rules of Civil Procedure. Plaintiff brings this action on her own behalf and on behalf of all citizens or other persons similarly situated who now or in the future are or may become subject to a Writ of Replevin under the conditions and as outlined in the sections below. The class is so numerous as to make joinder of all members of the class impracticable. There are questions of law or fact common to the class; the claims

of the plaintiffs are typical of the claims of the members of the class, and the plaintiffs will protect and adequately represent the interests of the class.

II. PARTIES

3. MARGARITA FUENTES is a resident of the City of Miami, Dade County, Florida.

4. Defendant EARL FAIRCLOTH is the Attorney General for the State of Florida. He is charged with the responsibility of appearing in and attending to in behalf of the state all suits in which the state may be a party or in anywise interested.

5. FIRESTONE TIRE AND RUBBER COMPANY is an Ohio corporation, registered in Florida and doing business at 1200 West Flagler Street in the City of Miami, Florida.

III. STATEMENT OF FACTS

6. On or about June 24, 1967, plaintiff purchased a gas stove from the defendant FIRESTONE TIRE AND RUBBER COMPANY, also known as FIRESTONE STORES, located at 1200 West Flagler Street in the City of Miami, Florida. On information and belief, FIRESTONE TIRE AND RUBBER COMPANY is an Ohio corporation. On or about December 21, 1967, plaintiff purchased a stereo set from the same corporation. Copies of these transactions are attached to plaintiff's original Complaint as Exhibit "A".

7. On or about September 15, 1969, defendant FIRESTONE TIRE AND RUBBER COMPANY made a demand upon said goods by submitting an affidavit in replevin to the Small Claims Court of Dade County, Florida, causing a Writ of Replevin to issue directed to all and singular the sheriffs and constables of the State of Florida to replevy the aforenamed goods and chattels. This was effectuated shortly thereafter by R. A. Williams, a Deputy Sheriff of Dade County. Copies of said affidavit and the ensuing Writ were attached to plaintiff's original Complaint as Exhibit "B".

8. Said Writ of Replevin was issued without a prior hearing of any kind afforded to plaintiff to determine the legitimacy of said demand, nor was she given notice of the repossession of the named goods and chattels prior to their taking, nor did she freely consent to the entering of her home by peace officers. A trial date was set in the above named Court, in the matter of Firestone Tire and Rubber Company v. Margarita Fuentes and has been continued pending further proceeding in this Court.

9. Plaintiff believes she has a meritorious defense to the repossession of said goods and chattels.

10. On information and belief, defendant FAIRCLOTH and his agents, servants and employees, have committed, authorized, permitted or condoned other similar acts, all under color of the replevin statutes, namely: unreasonably breaking or entering, with or without prior notice, into private premises, and searching and seizing goods therein, without search warrants issued by a magistrate upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the things to be seized. Each of said acts constitutes an unreasonable search and seizure, a trespass, and a seizure of property without due process of law. The exact number of such acts is unknown to plaintiff and her class but well known to the defendant.

IV. CAUSE OF ACTION

11. Plaintiff, for herself and the class which she represents, contends that the replevin statutes under which said Writ was issued are unconstitutional on their face and contrary to the guarantees of the Fourth and Fourteenth Amendments to the Constitution of the United States. In actions for the recovery of personal property, procedures for effecting summary repossession of said property are governed by Chapter 78 of the Florida Statutes, a copy of which was attached to plaintiffs' original Complaint as Exhibit "C". Upon proper compliance with certain procedural requisites (see paragraph 12 *infra*) by claimant in such an action, the sheriff, or constable of the county in which the claimed property is found

must seize and take said property, by force if necessary, without prior notice to either the alleged debtor or to the custodian of said property, and without hearing of any kind to determine the merits of the alleged debtor's claim, and regardless of whether the alleged debtor has been served with summons and complaint. If said property is located in a private dwelling or other private building or enclosure, said peace officers must publicly demand the delivery of said property, and if it be not delivered, must break and enter the premises and take the property into their possession, by force if necessary. No search warrant, nor any prior notice to the alleged debtor, nor hearing of any kind to determine the merits of claimant's claim is required or permitted.

12. The pertinent portions of the replevin statutes are set forth below:

78.01 Right to Replevin

Any person whose goods or chattels are wrongfully detained by any other person or officer may have a writ of replevin to recover them and any damages sustained by reason of the wrongful caption or detention as herein provided . . .

78.08 Writ; form; return

The writ shall command the officer to whom it may be directed to replevy the goods and chattels in possession of defendant, describing them, and to summon the defendant to answer the complaint.

78.10 Writ; execution on property in buildings, etc.

In executing the writ of replevin, if the property or any part thereof is secreted or concealed in any dwelling house or other building or enclosure, the officer shall publicly demand delivery thereof and if it is not delivered by the defendant or some other person, he shall cause such house, building or enclosure to be broken open and shall make replevin according to the writ; and if necessary, he shall take to his assistance the power of the county.

78.11 Writ; execution on property changing possession, etc.

If the property to be replevied is in the possession of defendant at the time of the issuance of the writ, and passes into the possession of a third person before the execution of the writ, the officer holding the writ shall execute it on the property in the possession of the third person and shall serve the writ and summons on defendant and the third person, and the action with proper amendments, shall proceed against the third person.

78.12 Writ; execution on property removed from jurisdiction

At the time of the service of the writ if the propery to be replevied is outside the territorial jurisdiction of the court issuing the writ, the officer to whom the writ is directed shall deliver it to the proper officer in the jurisdiction into which the property has been removed, and the latter officer shall execute the writ, and shall hold the property subject to the orders of the court issuing the writ.

13. Said statutory scheme, and specifically §§ .08, .10, .11, and .12, and the pertinent parts of § .01 of Chapter 78 of the Florida Statutes, insofar as they purport to authorize and require peace officers to enter and search private premises, and seize and take personal property, by force if necessary, and otherwise invade persons' privacy and deprive them of their rights and liberties, all unreasonably and without requiring the issurance by a magistrate of a warrant based upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the things to be seized, is on its face in violation of Amendments Four and Fourteen of the United States Constitution.

14. There is between the parties an actual controversy as hereinbefore set forth. The plaintiff and the class which she represents are suffering irreparable injury and are threatened with irreparable injury in the future

by reason of the acts herein complained of; plaintiff has and the class which she represents have, no plain adequate or complete remedy to redress the wrongs and unlawful acts complained of, other than this action for a declaration of rights and injunction; any other remedy to which plaintiff and the class which she represents could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury, damage and inconvenience to plaintiff, and to the class which she represents.

II.

15. Plaintiff and her class repeat and reallege each and every allegation in paragraphs one through fourteen with the same force and effect as if fully set forth herein.

16. Said statutory scheme, and specifically §§ .08, .10, .11, and .12, and the pertinent parts of .01 of Chapter 78 of the Florida Statutes, insofar as they purport to authorize and require peace officers to enter an alleged debtor's private premises and to take personal property found therein, without prior timely notice to him and without affording him a prior timely opportunity to be heard concerning the merits of claimant's claim, is on its face in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, plaintiff and the class which she represents pray this Court:

A. Assume jurisdiction of this cause and convene a three judge court pursuant to the appropriate enabling statutes;

B. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring Chapter 78 §§ .08, .10, .11, and .12 and the pertinent parts of s. .01 which allow for Writs of Replevin before judgment, and any other parts thereof found to be constitutionally infirm, to be violative of the Fourth and/or Fourteenth Amendments of the United States Constitution.

C. Upon due notice temporarily and upon Final hearing permanently enjoin the defendants, their agents, servants and employees from enforcing the aforenamed sections.

D. Enjoin the defendants from continuing to hold the aforenamed stove and stereo of the named plaintiff, or such of them that may have possession and/or control of same.

E. And grant such other and further relief as may be deemed proper by this Court.

Respectfully submitted,

/s/ C. Michael Abbott, Esquire
DONALD C. PETERS, ESQUIRE
BRUCE S. ROGOW, ESQUIRE
ALFRED FEINBERG, ESQUIRE
Attorneys for Plaintiff
400 Northwest Fifth Street
Miami, Florida 33128
Telephone: 377-0917

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 69-1359-Civil-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFF

vs.

EARL FAIRCLOTH, Attorney General for the State of Florida, E. WILSON PURDY, Sheriff of Dade County, and R. A. WILLIAMS, a Deputy Sheriff of Dade County, Florida, DEFENDANTS

ORDER—March 17, 1970

Upon consideration, it is ORDERED:

1. Plaintiff's motion to proceed in forma pauperis is denied without prejudice to renew if appropriate at some future date.
2. Landy's motion to intervene as plaintiff is denied.
3. Plaintiff's motion to amend her complaint to add Firestone as additional party defendant is granted.
4. Motions of defendants Williams and Purdy to be dismissed from this suit are granted.
5. Motion of defendant Faircloth to dismiss is denied.
6. Plaintiff's motion for summary judgment is denied without prejudice to renew if appropriate at a future date. Ruling on the summary judgment is not intended to resolve the contention of the plaintiff that the statute is facially unconstitutional.

ENTER: March 17, 1970

/s/ David W. Dyer
Circuit Judge

/s/ W. O. Mehrtens
District Judge

/s/ Joe Eaton
District Judge

[SEAL]

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN
DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1359-Civ-WM

[File Endorsement Omitted]

(Three Judge Federal Panel)

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFFS

—*v*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE & RUBBER COMPANY, DEFENDANTS

MOTION TO DISMISS SECOND AMENDED COMPLAINT—
Filed April 6, 1970

The defendant, The Firestone Tire and Rubber Company, by its undersigned attorneys, moves the Court for the entry of an order dismissing the plaintiffs' second amended complaint for declaratory and injunctive relief on the following grounds:

1. The second amended complaint fails to state a claim upon which relief can be granted.
2. The second amended complaint is improperly brought as a class action.
3. The Court lacks jurisdiction over the subject matter of this action.

MERSHON, SAWYER, JOHNSTON,
DUNWODY & COLE
Attorneys for Defendant, Firestone
Tire and Rubber Company
1600 First National Bank Building
Miami, Florida

By /s/ George W. Wright, Jr.

By /s/ Daniel S. Dearing

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN
DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1359-Civ-WM

[File Endorsement Omitted]

(Three Judge Federal Panel)

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFF

—*v*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

MOTION TO STRIKE—Filed April 6, 1970

The defendant, The Firestone Tire and Rubber Company, by its undersigned attorneys, moves the Court for the entry of an order striking from the plaintiffs' second amended complaint for declaratory injunctive relief the following allegations:

1. The words "and as a class for all those similarly situated" contained in the style of this action;
2. All of paragraph No. 2 of the second amended complaint;
3. The words "and the class which she represents" contained in paragraphs 11 and 14 and the first paragraph of the prayer of the second amended complaint;
4. The words "and her class" contained in paragraph 15 of the second amended complaint;

upon the grounds that this is an improper and unauthorized class action and the aforesaid allegations are, therefore, impertinent and immaterial.

MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE
Attorneys for Defendant, The Firestone Tire and Rubber Company
1600 First National Bank Building
Miami, Florida

By /s/ George W. Wright, Jr.

By /s/ Daniel S. Dearing

[Certificate of Service (Omitted in Printing)]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 69-1359-Civil-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFFS

—*vs*—

EARL FAIRCLOTH, Attorney General for the State of Florida, E. WILSON PURDY, Sheriff of Dade County, and R. A. WILLIAMS, a Deputy Sheriff of Dade County, Florida, DEFENDANTS

ANSWER—Filed April 9, 1970

COMES NOW, Earl Faircloth, Attorney General, State of Florida, and makes this his answer to the Amended Complaint for Declaratory and Injunctive Relief heretofore filed in this cause and says:

1. The provisions of Sections 78.08, 78.10, 78.11, 78.12, and 78.01, Florida Statutes, are not violative of the Fourth and Fourteenth Amendments of the United States Constitution.

2. Plaintiff's suit is not a proper subject for class action under Rule 23(b) of the Federal Rules of Civil Procedure.

3. Defendant admits that Plaintiff is a resident of the City of Miami, Dade County, Florida.

4. Defendant admits the allegations contained in paragraph 4 of the amended complaint.

5. Defendant admits that E. Wilson Purdy is the Sheriff of Dade County, Florida, and charged with the duty of executing all process placed in his hands in accordance with Florida Statutes.

6. Defendant admits that R. A. Williams is a Deputy Sheriff, Dade County, Florida, and charged with the duty of executing all process placed in his hands in accordance with Florida Statutes.

7. Defendant is without actual knowledge of the allegations contained in paragraph 7, but would admit that Plaintiff's Exhibit A indicates that one Margarita Fuentes purchased a stove and stereo from Firestone Tire and Rubber Company and voluntarily executed a retail installment contract for the payment thereof which specifically provided that the seller shall retain title and right of possession until the items are paid for in full. That in event of default of any payment or payments, the buyer Margarita Fuentes agreed that the seller Firestone Tire and Rubber Company may take back the merchandise. That the terms and conditions of the contract voluntarily executed by one Margarita Fuentes do not violate any State of Florida or United States law or constitutional provision thereof.

8. Defendant admits that the record on file in the Small Claims Court, Dade County, Florida, in case No. 205376, styled Firestone Tire and Rubber Co. vs. Fuentes, reveals that a writ of execution was issued by the Court directed to all and singular the Sheriffs and Constables of the State of Florida after an affidavit and bond by Firestone Tire and Rubber Company were filed and posted in double the amount of the declared value of the items enumerated in Plaintiff's Exhibit A.

9. Defendant admits that a Writ of Replevin was issued upon the filing of an affidavit and posting of a bond in double the amount of the declared value of the goods sought to be replevied without a hearing or trial to determine the legitimacy of Firestone Tire and Rubber Co.'s demand. Defendant denies that Margarita Fuentes did not freely consent to the entering of her home by police officers. Defendant admits that a trial date was set in the Small Claims Court, Dade County, Florida, in the matter of Firestone Tire and Rubber Co. vs. Margarita Fuentes and that said cause was continued at Margarita Fuentes' request pending proceedings in this Honorable Court.

10. Defendant denies that Plaintiff Margarita Fuentes has a meritorious defense to the repossession of items as enumerated in her Exhibit A and which are the sub-

ject matter of a cause pending in the Small Claims Court, Dade County, Florida. Defendant would further represent unto this Honorable Court that Plaintiff Margarita Fuentes has failed to allege that she is not in default of payment under the terms of the contract voluntarily entered into and attached to her complaint as Exhibit A. Plaintiff further fails to allege that she was entitled to right of possession at the time the items as enumerated in her Exhibit A were replevied.

11. Defendant denies each and every allegation contained in paragraph 11.

12. Defendant denies that the replevin statutes contained in Chapter 78, Florida Statutes, are unconstitutional and contrary to the Fourth and Fourteenth Amendments to the United States Constitution. Defendant disagrees with Plaintiff's interpretation of the provisions of Chapter 78, Florida Statutes, as contained in paragraph 12.

13. Defendant admits that Sections 78.01, 78.08, 78.10, 78.11, and 78.12, Florida Statutes, are pertinent portions of the Florida Statutes pertaining to replevin. However, an essential requisite under Chapter 78, Florida Statutes, before a replevin writ shall issue is requirement for the posting of a bond as contained in Section 78.07 as follows:

> "Before a replevy writ issues, plaintiff shall file a bond with surety payable to defendant to be approved by the clerk in at least double the value of the property to be replevied conditioned that plaintiff will prosecute his action to effect and without delay and that if defendant recovers judgment against him in the action, he will return the property, if return thereof is adjudged, and will pay defendant all sums of money recovered against plaintiff by defendant in the action."

14. Defendant denies the allegations contained in paragraph 14.

15. Defendant denies the allegations contained in paragraph 15.

16. Defendant denies the allegations contained in paragraph 16.

17. Defendant denies the allegations contained in paragraph 17.

WHEREFORE, having fully answered Plaintiff's Amended Complaint for Declaratory and Injunctive Relief, Defendant Earl Faircloth, Attorney General, State of Florida, respectfully moves this Honorable Court for the entry of an order discharging him as a party defendant and dismissing said amended complaint.

Respectfully,

EARL FAIRCLOTH
Attorney General

/s/ T. T. Turnbull
Assistant Attorney General

/s/ Edwin E. Strickland
Assistant Attorney General
The Capitol
Tallahassee, Florida 32304

[Certificate of Service (Omitted in Printing)]

EXHIBIT 2

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

AFFIDAVIT

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared JONATHAN P. ROSE, who, after first being duly cautioned and sworn deposes and says as follows:

1. That I am a third year student at the University of Miami Law School and will be graduated in June of 1970.
2. That I have examined the replevin cases filed in the Small Claims Court of Dade County, Florida, under Chapter 78 of the Florida Statutes for the period from January through December of 1969.
3. That my examination revealed that a total of 442 replevin cases were so filed during this period.
4. That all of these cases were pre-judgment replevins.
5. That 300 of these 442 cases have come to judgment as of April 10, 1970.
6. That 59 defaults were entered in these 300 cases.
7. That 9 break orders were issued authorizing forced entry.
8. That in none of the 442 cases filed did the defendant post a bond within three days as permitted by F.S.A. § 78.13.

/s/ Jonathan P. Rose
JONATHAN P. ROSE
Affiant

Sworn to and Subscribed before me this 14th day of April, 1970.

/s/ Minnie R. Burrows
Notary Public,
State of Florida at Large

My Commission expires.
Notary Public, State of Florida at Large
My Commission Expires Oct. 14, 1973
Bonded Thru Fred W. Diestelhorst

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN
DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1359-Civ-WM

[File Endorsement Omitted]

(Three Judge Federal Panel)

MARGARITA FUENTES, individually and as a class for all those similarly situated, PLAINTIFF

—*v*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

STIPULATION OF FACTS—Filed April 30, 1970

It is hereby stipulated and agreed upon by and between the plaintiff, MARGARITA FUENTES, and the defendants, EARL FAIRCLOTH, Attorney General for the State of Florida, and THE FIRESTONE TIRE AND RUBBER COMPANY, through their undersigned attorneys of record, as follows:

—I—

Plaintiff, MARGARITA FUENTES (hereinafter referred to as Mrs. Fuentes) is and was at all times material to this action a resident of Dade County, Florida. Defendant, THE FIRESTONE TIRE AND RUBBER COMPANY, (hereinafter referred to as Firestone) is and was at all times material to this action a corporation duly incorporated and existing under the laws of the State of Ohio, with its principal office in that State, and authorized to transact business in the State of Florida. At all times material to this action, Firestone owned and operated a retail store, No. 2627, located at

1200 Flagler Street, Miami, Dade County, Florida, from which Firestone sold to the general public various items of merchandise.

—II—

Mrs. Fuentes had made six installment purchases from Firestone on time-payment contracts previous to the one giving rise to this action and had paid for them. Although Plaintiff is unable to stipulate to the following details which describe these installment purchases, Firestone contends the following based upon its credit records:

Mrs. Fuentes applied for credit with Firestone on January 31, 1964. She represented herself as a 49-year-old divorcee who had lived at 137 S.W. 10th Avenue, Miami, for five months. She had been employed by Geneie of Miami, an apparel factory, for one and a half years as a sewing machine operator. She was paid $60.00 per week. She had very good credit reference with Ideal Trading Co., Inc., which indicated a credit history dating from 1962. Firestone approved her. The next day she bought a console T.V. and took out a service policy. A year later, she bought a toaster, and in the fall of the following year, she bought a refrigerator.

On October 30, 1965, Mrs. Fuentes opened another account with Firestone. Her address was then 1275 S.W. 1st Street. She purchased two bicycles. She paid for them in fourteen installments.

She next applied for credit with Firestone on March 29, 1967. She represented that she had rented a home at 112 S.W. 11th Avenue, Miami, Florida, for longer than a year, and that she had been employed by Mr. Dino's as a sewing machine operator for a year with a monthly salary of between $300.00 and $399.00. Her credit references and employment were verified. A credit limit was granted of $495.00.

—III—

On June 24, 1967, Mrs. Fuentes purchased from Firestone (through its Store No. 2627) a gas stove for

$139.95 together with a $14.95 policy assuring her free service for one year. With sales tax of $4.66, handling charges of $20.67 and documentary stamp of $.30, the total time balance was $180.53, to be paid in 17 equal installments of $11.00. A copy of the installment sales contract is attached hereto as Exhibit A.

During the course of approximately one year from the date of her purchase, Mrs. Fuentes complained on more than one occasion of mechanical problems with her stove. Firestone asserts that satisfactory repairs were made which included replacement at no charge to Mrs. Fuentes of stove burners. Mrs. Fuentes alleges that if such repairs were made, they were not made to her satisfaction. Firestone denies this allegation.

On November 27, 1967, Mrs. Fuentes purchased from Firestone (through its Store No. 2627) a Philco stereo set for $398.75 and a service policy of $12.50. Documentary stamp charges of $.90 and sales taxes of $12.47 brought the net cash price to $424.62.

A down payment of $40.00 was made, leaving a net cash balance of $384.62.

The balance remaining unpaid on her gas stove ($136.53) less a refund of part of the handling charge ($10.20) brought the total cash balance for both the gas stove and stereo to $510. 95. To this was added a new handling charge of $101.80 for a total time balance of $612.75 for both the gas stove and stereo, to be paid over 24 months commencing December 2, 1967. Each installment was to be in an amount of $26.00. A copy of the installment sales contract is attached hereto as Exhibit B.

On February 6, 1968, Mrs. Fuentes made a payment in the amount of $30.00. She made $30.00 payments on March 15, and April 9. On May 21, she made a $26.00 payment, and on June 5, a $6.00 payment. On July 3, she paid $20.00. On July 15, she made a payment of $208.70.

The effect of this last payment was to prepay installments through March, 1969. The required April, 1969, installment payment in the sum of $26.00 was not made. A notice was mailed to Mrs. Fuentes. The required

May, 1969, installment payment in the sum of $26.00 was not paid. A telegram was sent to her on May 12, 1969, to the effect that she was required to pay the past-due account of $204.05 that day, or return the merchandise. The form telegram was sent by the store credit manager, Mr. John D. Daley. She failed to pay.

On September 15, 1969, Firestone filed in the Small Claims Court in and for Dade County, Florida, under Case No. 205376, the following pleadings:

A. Statement of claim, true copy of which is attached hereto and by reference made a part hereof as Exhibit C.

B. Affidavit in replevin, true copy of which is attached hereto and by reference made a part hereof as Exhibit D.

C. Replevin bond, true copy of which is attached hereto and by reference made a part hereof as Exhibit E.

On September 15, 1969, the date of filing the foregoing pleadings by Firestone, Mrs. Fuentes had not made certain payments according to the schedule of payments in Exhibit B. She was then indebted to Firestone in the total sum of $204.05 as the balance due upon the total purchase price for the aforesaid gas stove and stereo.

On September 15, 1969, the Clerk of the Small Claims Court in and for Dade County, Florida, pursuant to the aforelisted pleadings, issued a writ of replevin, true copy of which is attached hereto and made a part hereof as Exhibit F. Said writ of replevin was delivered on the same date to the office of the Sheriff of Metropolitan Dade County, Florida, for service upon Mrs. Fuentes and execution upon the aforesaid gas stove and stereo under and pursuant to the provisions of Chapter 78, Florida Statutes, 1967.

On September 15, 1969, at approximately 5:00 o'clock p.m., Robert Arthur Williams, a Deputy Sheriff in the office of the Sheriff of Metropolitan Dade County, went to the residence of Mrs. Fuentes, located at 112 S.W. 11th Avenue, Miami, Florida, to serve upon Mrs. Fuentes the statement of claim and the writ of replevin and to

execute the writ of replevin upon the aforesaid gas stove and stereo. Two employees of Firestone, Mr. David Daley and Mr. Ricardo Rodriguez, met Deputy Williams at this location with a Firestone truck.

Upon arrival, Deputy Williams went to the door of the Fuentes residence. The main front door was open. A screen door was closed. A woman and two boys were in the living room. Deputy Williams knocked on the door. He asked in English to see Mrs. Fuentes. The person who came to the door was Leonor Delgado, the plaintiff's daughter-in-law. She does not speak English and apparently did not understand Deputy Williams. At this point, the stories of the parties differ. Deputy Williams alleges that two small boys, Hugo Delgado, age twelve, and Ricardo Delgado, age ten, were within the house and, both being bi-lingual, understood him and invited him in at that time and he entered the living room pursuant to this invitation. Mrs. Fuentes concedes that the boys were within the house and that they are bi-lingual, but denies that the Deputy Sheriff entered the home at that point. Her contention is that Deputy Williams stayed on the porch at this time while the parties spoke through the screen door. She admits and contends that Deputy Williams was invited into the house and entered the house only after Mr. Leon, her son-in-law, later arrived at her home, as hereinafter set forth.

Deputy Williams mistook Mrs. Delgado for Mrs. Fuentes. Mrs. Fuentes was in the living room at the time. He identified himself and announced that he was there to repossess a stove and a stereo set for Firestone. He showed them the writ and the statement of claim and explained that he was there under court order to pick up the merchandise. There was a difficult communications problem. Neither of the two women seemed to him to speak or understand English. The two boys translated. Gradually, Deputy Williams was able to communicate his purpose and the effect of the writ and statement of claim. A true copy of the return of service is attached hereto and made a part hereof as Exhibit F-1.

Mrs. Delgado, who also lived in the house, then became "upset and emotional". She protested the repossession.

She asked for time for Mrs. Fuentes to contact Joaquin Leon, Mrs. Fuentes' son-in-law, who would assist her in the matter. Deputy Williams agreed to wait.

At the request of Mrs. Fuentes, Mr. Leon immediately left work and drove the two blocks from his place of business to the Fuentes residence. He introduced himself in English to Deputy Williams. He explained that his attorney had advised him that a court proceeding was necessary before the merchandise could be repossessed, and that, on his advice, he was not going to give up the property.

Deputy Williams explained the effect of the writ to Mr. Leon, that he was obliged to repossess the stove and stereo in accordance with its terms. According to Mrs. Fuentes, Mr. Leon then agreed that the Deputy Sheriff, Mr. Daley and Mr. Rodriguez could come into the house and repossess the merchandise. It was indicated to Deputy Williams that the stereo was in the living room and that the gas stove was on an open porch at the back of the house.

Mr. Daley and Mr. Rodriguez of Firestone had parked the Firestone truck in the driveway of the Fuentes residence and were waiting outside on the front porch. Deputy Williams called them into the living room where he pointed out the stereo. He also directed them to the gas stove. The two men picked up the stereo, took it outside, and loaded it on the truck. They then went to the rear of the house to pick up the gas stove. It was not connected in any way to gas lines or to the house. They carried it to the front and loaded it upon the Firestone truck. Another stove was located in the kitchen of the Fuentes home at the time that Daley and Rodriguez picked up the stereo and gas stove for Firestone.

Neither Daley nor Rodriguez had any conversation with anyone inside or outside of the Fuentes home other than Deputy Williams. After Mr. Leon agreed that Deputy Williams could repossess the merchandise, no one objected to Daley or Rodriguez repossessing the stove and stereo. The only conversation which they had with Deputy Williams was, first, in the living room of the Fuentes home, wherein Deputy Williams directed them

to the items to be replevied, and, second, on the front porch of the Fuentes home, after they had loaded the merchandise onto the truck, when Deputy Williams requested Mr. Daley to sign a receipt to the Sheriff's office for the gas stove and stereo. A true copy of the return of service of the aforesaid writ of replevin upon the stove and stereo is attached hereto and by reference made a part hereof as Exhibit F-2.

—V—

The aforesaid action instituted by Firestone against Mrs. Fuentes in the Dade County Small Claims Court was initially set for September 30, 1969, as appears on the statement of claim (Exhibit C). On that date, the Court, upon oral motion of the attorney for Mrs. Fuentes, entered an order continuing trial of the cause until December 15, 1969, at 3:00 p.m., a true copy of which order is attached hereto and made a part hereof as Exhibit G.

On November 20, 1969, Mrs. Fuentes filed in this Court her initial complaint for declaratory and injunctive relief. Pursuant to motion for continuance, filed by Mrs. Fuentes in the Small Claims Court, a true copy of which motion is attached hereto and made a part hereof as Exhibit H, that Court entered an order bearing date December 5, 1969, a true copy of which is attached hereto and made a part hereof as Exhibit I, continuing the action filed by Firestone against Mrs. Fuentes pending further proceedings in the case *sub judice*, and no further proceedings have since been held in said cause in the Dade County Small Claims Court.

—VI—

The parties hereto reserve the right to adduce testimony and evidence before the Court as to all facts relevant and material to the issues involved in this action not specifically stipulated to herein and/or as to all facts wherein this stipulation reflects and recites adverse contentions or a dispute between the parties as to such facts. The parties further reserve the right to object at final

hearing or at hearing upon any motions, including, but not limited to, motions for summary judgment, to the admissibility of any of the facts herein stipulated upon the grounds of irrelevancy and immateriality to the issues involved herein.

DATED this 29th day of April, 1970.

BRUCE S. ROGOW, ESQUIRE;
ALFRED FEINBERG, ESQUIRE
622 N.W. 62 Street
Miami, Florida
Of Counsel for Plaintiff

C. MICHAEL ABBOTT, ESQUIRE;
DONALD C. PETERS, ESQUIRE;
RENE V. MURAI, ESQUIRE
400 Northwest Fifth Street
Miami, Florida 33128
Attorneys for Plaintiff

By /s/ C. Michael Abbott
MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE
1600 First National Bank Building
Miami, Florida 33131
Attorneys for The Firestone Tire and Rubber Company

By /s/ George W. Wright, Jr.
EARL FAIRCLOTH
Attorney General

By /s/ T. T. Turnbull

[Mershon, Sawyer, Johnston, Dunwody & Cole, Received, /s/ [Illegible], April 6, 1970, Time, 8 a.m., Reference]

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32304

[State Seal]

EARL FAIRCLOTH
Attorney General

April 1, 1970

Honorable George Wright
1600 First National Bank Building
Miami, Florida 33131

Re: Fuentes v. Faircloth, et al.

Dear Mr. Wright:

This will confirm our conversation at approximately 3:30 p.m. this date in which I have given you my authority to sign my name as Chief Trial Counsel for the Attorney General on a stipulation of fact which you and counsel for Plaintiff in the case of Fuentes above noted have been designated to file with the Court. I will, of course, file for the Attorney General and the State, within the proper time, an answer in view of the fact that our Motion to Dismiss was denied. We are only concerned, however, with the constitutionality of the statute and not with the factual situation as we discussed.

I am including three copies of this letter to you so that you may use them as you see fit to file in the Court with the stipulation.

With kind regards.

Sincerely yours,
For the Attorney General:

/s/ T. T. Turnbull
T. T. TURNBULL
Chief Trial Counsel

TTT/pr
Enclosures

Margarita Fuentes — DATE 6 24 67

ADDRESS 112 ... PHONE 371-54...

Miami - Fla. — CREDIT APPROVAL — SOLD BY ...

MAKE VEHICLE POSTED — MILEAGE — TIME PROMISED

QUAN.	DESCRIPTION	UNIT PRICE	PRICE	AMOUNT
1 - 5C309	... Gas Stove		~~...~~	139.95
1 year	Service policy	10185		14.95
			=	154.90
			D/S	.30
				155.20

Def #615-79

WHEEL BALANCE

TIRE VALUES

SERIAL NUMBERS

SALES TAX	4.66
A. NET CASH PRICE	159.86
B. DOWN PAYMENT	(—)
C. NET CASH BALANCE	159.86
D. UNPAID PRIOR AGREEMENTS	—
E. TOTAL	159.86
F. LESS HANDLING CHARGES ...	(—)
G. ...	159.86
...	20.67
TIME BALANCE	180.53

AMOUNT THIS SALE (A) $ 159.86 POSTING TOTAL

NET TOTAL TIME BALANCE H/C (H LESS F) $ 20.67 180.53

The undersigned Buyer agrees to pay to The Firestone Tire & Rubber Co. or its order the amount shown in Item I in the table at the right hereof, including any prior time payment agreements which may be incorporated herein by reference, ... [illegible]

11.00 / 100 / 8 — 8/3/67 (17)

... CONTRACT.

Salesman: ...

Store Mgr.

Signature: Margarita Fuentes

Witness

615-78 ACCOUNTING COPY — MDSE. CHECKED BY — JUN 26 67 — ... TERMS — OPEN CHARGE — DEALER CHARGE

CONTRACT

NAME Margarita Fuentes DATE 11-11-67
PRINT PLAINLY
ADDRESS 11X SW 11 Ave PHONE FR1-2980
Miami · Fla.
CREDIT APPROVED BY ____ SOLD BY ____ TIME REQUIRED ____

MAKE VEHICLE ____ YEAR ____ LICENSE NO. ____ MILEAGE ____

POSTED

QUAN.		DESCRIPTION	OFFICE USE	UNIT EXC. TAX	PRICE	AMOUNT
1-	1837WA-	Philco stereo		347.25		398.75
90		Day service policy		2.95		12.50
				350.20		411.25
					D/S	90
						412.15
		WHEEL BALANCE				
		TIRE VALVES				

SERIAL NUMBERS

SALES TAX 11.47

AMOUNT THIS SALE (A) $ 424.62 POSTING TOTAL
NET TOTAL TIME BALANCE H/C (H LESS F) $ 91.60 516.22

A.	NET CASH PRICE	424.62
B.	DOWN PAYMENT	(40.00)
C.	NET CASH BALANCE	384.62
D.	UNPAID PRIOR AGREEMENTS	136.53
E.	TOTAL	521.15
F.	LESS HANDLING CHARGE REFUND	(10.20)
G.	CASH BALANCE IF PAID IN 30 DAYS	510.95
H.	HANDLING CHARGE	101.80
I.	TOTAL TIME BALANCE	612.73

TOTAL TIME BALANCE TO BE PAID IN 24 MONTHLY INSTALLMENTS OF $ 26.65
Starting 12-2-67 UNTIL PAID IN FULL (last payment may vary slightly)

The undersigned Buyer agrees to pay to The Firestone Tire & Rubber Company or its order the amount shown in Item I in the table at the right hereof, including any prior time payment agreements which may be incorporated herein by reference, payable as shown in said table. Until such payment has been made Buyer agrees that Seller shall retain title and right of possession of said merchandise; Buyer will not sell, remove or encumber and shall be responsible for all losses of and damage to said merchandise and in the event of default of any payment or payments, Seller at its option may take back the merchandise or affirm the sale and hold Buyer liable for the unpaid balance, including any delinquency or collection charge where permitted by law. Except for standard warranties the foregoing constitutes the entire agreement between the parties.

NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space(s). 2. You are entitled to a completely filled in (exact) copy of this contract when you sign it. 3. Under the law, you have the following rights, among others, (a) To pay off in advance the full amount due and to obtain a partial refund of the finance or credit service charge; (b) Under certain conditions, to redeem the property if repossessed for a default; to require a resale of the property repossessed.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF THE MERCHANDISE AND SERVICES SET FORTH HEREON TOGETHER WITH A COPY OF THIS RETAIL INSTALLMENT CONTRACT.

Seller: THE FIRESTONE TIRE & RUBBER COMPANY
By [signature] Store Mgr.
Witness

Buyer Margarita Fuentes
Witness

728-73	ACCOUNTING COPY	MDSE. CHECKED BY-	CASH	DEFERRED TERMS	OPEN CHARGE	DEALER CHARGE
				X		

The Firestone Tire & Rubber Co. In and for CASE No. 2055?6
or Ohio Corp. D/B/A DADE COUNTY, FLORIDA
Firestone Stores — Plaintiff
200 W. Flagler St. — Address

vs.

Margarita Fuentes — Defendant
112 S.W. 11 Ave. Miami, Fla. — Address

Tel.:

RULE NO.

STATEMENT OF CLAIM

Plaintiff sues the defendant for that defendant purchased the following described personal property on a conditional sales contracts dated as follows, and now refuses to pay.

6-24-67 (1) 5C207 Gas Range
11-21-67 (1) 1837WA Philco Stereo

Wherefore plaintiff demands the return of the merchandise together with a judgement for costs of court.

STATE OF FLORIDA, DADE COUNTY } SS:

J.D.Daley says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense. Plaintiff states that defendant(s) is/are not in the military service of the United States.

Attorney for Plaintiff

J.D. Daley
Plaintiff (or Agent)

Address

Telephone Number

Deanare Presby
Deputy Clerk

RULE 7.321 NOTICE TO APPEAR (SUMMONS)

The State of Florida:

TO: Margarita Fuentes 112 S.W. 11 Ave. Miami Fla.
Defendant

You are hereby notified that the above named plaintiff has made a claim and is requesting judgment against you in the sum of $ 201.05, as shown by the foregoing statement, together with court costs and any further costs which may accrue.

This Court will hear and try this claim on SEP 30 1969, ~~1968~~, at 9:00 A.M., at 1351 N. W. 12th Street, Miami, Florida, on the Fourth Floor of the Metropolitan Justice Building, before the Honorable Judge, WHOSE NAME IS STAMPED IN RED ON THIS SUMMONS.

You are required to be present at the hearing at the time required in order to avoid a judgment by default against you.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the Clerk at once for assistance.

If you desire to file any counterclaim or set-off to plaintiff's said claim, it must be filed in this Court by you or your attorney IN WRITING at least five (5) days prior to the above date set for trial of said claim.

You may come with or without an attorney.

Dated at Miami, Florida, this 15 day of ~~Sept.~~ 1969 ~~1968~~.

Division "C"
JUDGE PERRY

EDWARD B. MILLER, Clerk, Dade County Small Claims Court

(SEAL) 289

By Deanare Presby
Deputy Clerk

BRING THIS NOTICE WITH YOU AT ALL TIMES

EXHIBIT C

SMALL CLAIMS COURT, IN AND FOR DADE COUNTY, FLORIDA

No. 205376

The Firestone Tire & Rubber Co.
an Ohio Corp. D/B/A
Firestone Stores Plaintiff,

vs.

Margorita Fuentes Defendant.

AFFIDAVIT IN REPLEVIN

Before me personally appeared the undersigned who being by me first duly sworn says that he is the agent of the above named plaintiff; that said plaintiff is lawfully entitled to the possession of the following described personal property, to-wit:

(1) 5C207 Gas Range
(1) 1837WA Philco Stereo

That the true value of said property is the sum of $ 204.05 ; that said property has not been taken for any tax, assessment or fine levied by virtue of any law of the State of Florida, nor seized under any execution or attachment against the goods and chattels of said plaintiff liable to execution and that the above named defendant has possession of the above described personal property and detains the same from said plaintiff in the County of Dade, State of Florida.

Division "C"
JUDGE PERRY

Sworn to and subscribed before me this

day of A. D. 19

SHERIFF-CLERK

190

EXHIBIT D

SMALL CLAIMS COURT, IN AND FOR DADE COUNTY, FLORIDA

FIRESTONE TIRE AND RUBBER COMPANY d/b/a FIRESTONE STORES, an Ohio corporation

No. 205376

Plaintiff,

vs.

MARGARITA FUENTES

Defendant.

REPLEVIN BOND

KNOW ALL MEN BY THESE PRESENTS, That we FIRESTONE TIRE AND RUBBER COMPANY, an Ohio corp. d/b/a FIRESTONE STORES principal, and INTERSTATE FIRE INSURANCE COMPANY, a Tenn. corp. as surety, are held and firmly bound unto MARGARITA FUENTES in the sum of FOUR HUNDRED EIGHT & 10/100 ($408.10) ----- Dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 15th day of Sept. A. D. 19 69

The condition of the above obligation is such, that whereas the said FIRESTONE TIRE AND RUBBER COMPANY an Ohio corporation d/b/a FIRESTONE STORES has this day begun an action of Replevin to recover possession of personal property, to-wit:

1 5C207 Gas Range, 1 1837 MA Philco Stereo

of the value of TWO HUNDRED FOUR & 5/100 ($204.05) ------- Dollars.

NOW THEREFORE, If the said FIRESTONE TIRE AND RUBBER COMPANY an Ohio corporation d/b/a FIRESTONESTORES shall diligently prosecute the said action and return the said property to the said , if return thereof shall be adjudged, and shall pay him all such sums of money as may for any cause be recovered against said plaintiff by such defendant in said action for any cause whatever, then this obligation to be void, else it remain of full force and virtue.

Taken before and approved by me,

Judge

FIRESTONE TIRE AND RUBBER COMPANY d/b/a FIRESTONE STORES (SEAL)
as Principal

By (SEAL)
as Secty

INTERSTATE FIRE INSURANCE COMPANY (SEAL)
As Surety

By
Resident Vice Pres

29/

EXHIBIT E

FILE IN TRIPLICATE

SMALL CLAIMS COURT, IN AND FOR DADE COUNTY, FLORIDA

No. 205376

WRIT OF REPLEVIN

IN THE NAME OF THE STATE OF FLORIDA

TO ALL AND SINGULAR THE SHERIFFS AND CONSTABLES OF THE STATE OF FLORIDA:

You are hereby commanded to replevy the goods and chattels described as follows:

(1) 5C207 Gas Range
(1) 1837WA Philco Stereo

in possession of Margarita Fuentes
112 S.W. 11 Ave. Miami Fla.

the defendant in a certain cause pending in the Small Claims Court in and for Dade County, Florida wherein The Firestone Tire & Rubber Co. an Ohio Corp. D/B/A Firestone Stores the plaintiff

And you are hereby commanded to summon the said defendant Margarita Fuentes

to be and appear before said Court on the day of SEP 30 1969 A. D. 19

at 9:00 o'clock A M.,

to answer the said plaintiff

FL. JUSTICE BLDG. 1351 N. W. 12th ST.

in the premises.

Division "C"
JUDGE PERRY.

WITNESS, the HONORABLE JUDGES OF THE COURT, as also, ~~EDWARD B. MILLER~~, Clerk, Dade County Small Claims Court, this the 15 day of Sept.

A. D. 1969

By Deputy Clerk

115.05-16

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EXHIBIT F

No. 3130 205376

INDIVIDUAL SERVICE

COURT Small Claims STYLE Writ of Replevin

ATTORNEY: Firestone Stores

ADDRESS:

PLAINTIFF: The Firestone Tire & Rubber Co. dba Firestone Stores

DEFENDANT: Margarita Fuentes

RECEIVED THIS WRIT ON THE 15 DAY OF September A. D. 196 9 AND SERVED THE SAME ON

MARGARITA FUENTES

THE WITHIN NAMED DEFENDANT AT 5:00 p. M. ON THE 15 DAY OF September A. D. 196 9, IN DADE COUNTY, FLORIDA, BY DELIVERING TO THE WITHIN NAMED DEFENDANT A TRUE COPY OF THIS WRIT THE DATE AND HOUR OF SERVICE ENDORSED THEREON BY ME, AND AT THE SAME TIME I DELIVERED TO THE WITHIN NAMED DEFENDANT A COPY OF PLAINTIFF'S INITIAL PLEADING AS FURNISHED BY THE PLAINTIFF, EXPLAINING THE CONTENTS THEREOF.

P

SEP 19 196

WRIT $ 5.00

SHERIFF E. WILSON PURDY RW Mac 9/17/69

DADE COUNTY, FLORIDA

BY R. Williams DEPUTY SHERIFF

114.22-4

No. 3130 205376

ORIGINAL RETURN

COURT Small Claims STYLE Writ of Replevin

ATTORNEY: Firestone Stores
1200 W. Flagler St.

ADDRESS:

PLAINTIFF: The Firestone Tire & Rubber Co. dba Firestone Stores

DEFENDANT: Margarita Fuentes

RECEIVED THIS WRIT ON September 15, A.D. 19 69

AND EXECUTED SAME IN DADE COUNTY, FLORIDA, ON September 15, A.D. 19 69

By replevying and taking into my custody the within described property to-wit:

1 5C207 Gas Range
1 1837WA Philco Stereo

P

SEP 19 1969

E. WILSON PURDY RW mac 9/17/69
SHERIFF

DADE COUNTY, FLORIDA

BY R. Williams DEPUTY SHERIFF

5-30

Pay F

114.22-46

EXHIBIT F-1

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EXHIBIT F-2

No. 205376

THE FIRESTONE TIRE & RUBBER CO., an Ohio Corp. d/b/a FIRESTONE STORES Plaintiff.

MARGORITA FUENTES Defendant.

ORDER OF CONTINUANCE
FROM SEPTEMBER 30, 1969 at 9:00 a.m..

Upon application of the ~~plaintiff,~~ defendant,

IT IS ORDERED that the hearing and trial of this cause be and the same is hereby continued to

December 15, 1969 at 3:00 p.m.

DONE AND ORDERED this 30th day of September A.D. 1969

MORTON L. PERRY
Judge

dw
cc: Plaintiff
Defendant's Attorney

FORM CT-23

EXHIBIT G

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EXHIBIT H

IN THE SMALL CLAIMS COURT
IN AND FOR DADE COUNTY, FLORIDA

Case No. 205376

THE FIRESTONE TIRE & RUBBER CO., an Ohio Corporation, d/b/a FIRESTONE STORES, PLAINTIFF

vs.

MARGARITA FUENTES, DEFENDANT

MOTION FOR CONTINUANCE

NOW COMES defendant, by and through her undersigned attorney, and moves this court for a continuance of the within cause, and shows unto this honorable court as follows:

1. Defendant has filed complaint #69-1359 Civ-WM in the Federal Court of the Southern District of Florida for a preliminary and permanent injunction against the continued enforcement in this case, and the future enforcement generally, of Chapter 78, §§ .08, .11, .12, .13, and the pertinent portions of § .01 on the grounds that said statutes are contrary to the Fourth and Fourteenth Amendments of the United States Constitution. A three-judge court is now being convened to hear this matter.

2. The above-named sections were used by plaintiff in this cause to replevy the stove and stereo which make up the subject matter of this action.

3. Defendant submits that such action was unconstitutional and wishes the federal court to examine the constitutionality of this procedure in her case, and generally for all other persons similarly situated.

4. Defendant submits that the statutory procedures set down for replevin in the State of Florida where property is taken prior to judgment; is analogous to the type of pre-judgment garnishment struck down by the Supreme Court of the United States in *Sniadach* v.

Family Finance Corporation of Bay View, et al., 23 L. Ed. 2d 349 (1969).

5. Defendant further submits that the proper forum for the adjudication of this statutory procedure alleged to be unconstitutional is the federal courts of the United States under 42 U.S.C. § 1983.

6. Defendant would therefore like a continuance of the within cause until such time as the federal court has an opportunity to rule on her allegations, and in this regard, promises, through her attorney, to prosecution said matter in federal court diligently and in good faith.

WHEREFORE, defendant moves this honorable court to grant a continuance in the within cause pending the outcome of the above named federal suit.

Respectfully submitted,

/s/ C. Michael Abbott
C. MICHAEL ABBOTT, ESQUIRE
E.O.P.I. LEGAL SERVICES
Attorney for Defendant
400 N.W. 5th Street
Miami, Florida 33128
Telephone 377-0917

EXHIBIT I

IN THE SMALL CLAIMS COURT
IN AND FOR DADE COUNTY, FLORIDA

Case No. 205376

THE FIRESTONE TIRE & RUBBER CO., an Ohio Corporation, d/b/a FIRESTONE STORES, PLAINTIFF

vs.

MARGARITA FUENTES, DEFENDANT

ORDER OF CONTINUANCE

THIS CAUSE came on to be heard on defendant's Motion for Continuance, and the Court being fully advised in the premises, it is

ORDERED that said Motion be and the same is hereby granted, and this cause is continued pending further proceeding in the action filed by defendant known as *Fuentes* v. *Faircloth*, #69-1359 Civ-WM. (S.D. Fla.)

DONE AND ORDERED this 5 day of Dec., 1969.

/s/ Morton L. Perry
MORTON L. PERRY
Judge

[Certificate of Service (Omitted in Printing)]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 69-1359-Civ-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFFS

vs.

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

ORDER—May 4, 1970

Upon consideration, it is ORDERED:

(1) The motion of Firestone Tire and Rubber Company to dismiss the second amended complaint is denied.

(2) The motion of the Firestone Tire and Rubber Company to strike all references in the complaint with reference to the plaintiff representing a class is granted.

(3) The plaintiff's renewed motion for summary judgment is held in abeyance and this cause is set for the taking of testimony of the witnesses produced by both parties (and which is not covered by the stipulation of facts) on the 22nd day May, 1970, in the Central courtroom, Miami, Florida, at 2:00 P.M.

This 4 day of May, 1970.

/s/ David W. Dyer
Circuit Judge

/s/ W. O. Mehrtens
District Judge

/s/ Joe Eaton
District Judge

[SEAL]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

File No. 69-1359-Civ-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFFS

—*vs*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

ANSWER OF DEFENDANT, FIRESTONE TIRE AND RUBBER COMPANY, TO SECOND AMENDED COMPLAINT—Filed May 21, 1970

The Defendant, FIRESTONE TIRE AND RUBBER COMPANY, by its undersigned attorneys, for Answer to the Second Amended Complaint of the Plaintiff, says:

1. This Defendant denies each and every allegation contained in paragraphs Nos. 1 and 2 of the Second Amended Complaint.

2. This Defendant admits the allegations contained in paragraphs Nos. 3 and 4 of the Second Amended Complaint.

3. Answering paragraph No. 5 of the Second Amended Complaint, this Defendant admits that it is a corporation duly organized and existing under the laws of the State of Ohio and qualified to transact business in the State of Florida and that it maintains a place of business, among other places in Florida, at 1200 West Flagler Street, Miami, Florida.

4. Answering paragraph No. 6 of the Second Amended Complaint, this Defendant admits the allegations contained therein, except that the stereo set purchased from this Defendant by the Plaintiff was purchased on or about

November 21, 1967, and not on or about December 21, 1967.

5. Answering paragraph No. 7 of the Second Amended Complaint, this Defendant admits that on or about September 15, 1969, it filed in the Small Claims Court of Dade County, Florida, a Statement of Claim, Affidavit in Replevin and a Replevin Bond, true copies of which are attached to and filed with the Stipulation of Facts executed between the parties to this cause on April 29, 1970 and heretofore filed in this cause on April 30, 1970, and that a Writ of Replevin, a true copy of which is attached to said Stipulation of Facts as Exhibit F and to the Plaintiffs' original Complaint as Exhibit B, was issued by the Clerk of said Court directed to all and singular the Sheriffs and Constables of the State of Florida commanding them to replevy the goods and chattels described therein, which Writ, together with aforesaid Statement of Claim, was duly and lawfully served by R. A. Williams, a Deputy Sheriff of Dade County, Florida, but this Defendant specifically denies all remaining allegations contained in paragraph No. 7 of the Second Amended Complaint.

6. Answering paragraph No. 8 of the Second Amended Complaint, this Defendant admits that the aforesaid Writ of Replevin was issued by the Clerk of the Small Claims Court for Dade County, Florida, without a prior hearing before that Court, and that a trial date was set in said Replevin action in said Court and has been continued pending further proceedings in this Court, but this Defendant specifically denies all remaining allegations contained in paragraph No. 8 of the Second Amended Complaint.

7. This Defendant specifically denies each and every allegation contained in paragraphs Nos. 9, 10 and 11 of the Second Amended Complaint.

8. Answering paragraph No. 12 of the Second Amended Complaint, this Defendant admits that portions of Chapter 78 of the Florida Statutes are quoted and set forth therein, but specifically denies that the portions of said Chapter quoted therein are the "pertinent portions"

of the replevin statutes and would respectfully refer to the Court to all of the provisions of Chapter 78 of the Florida Statutes governing and pertaining to actions in replevin.

9. This Defendant specifically denies each and every allegation contained in paragraphs Nos. 13 and 14 of the Second Amended Complaint.

10. Answering paragraph No. 15 of the Second Amended Complaint, this Defendant repeats and reavers each and every of its foregoing responses to the allegations contained in paragraphs Nos. 1 through 14 of the Second Amended Complaint as if fully set forth herein.

11. This Defendant specifically denies each and every allegation contained in paragraph No. 16 of the Second Amended Complaint.

12. This Defendant specifically denies each and every allegation contained in the Second Amended Complaint not expressly admitted herein.

13. The Court lacks jurisdiction over the subject matter of this action.

14. This Defendant affirmatively avers and alleges that the Plaintiff has no standing or right to bring this action and to attack the constitutionality of any of the provisions of Chapter 78 of the Florida Statutes in that she did freely and voluntarily consent to the entry into her home by the aforesaid R. A. Williams, Deputy Sheriff of Dade County, Florida, and the replevying by him, pursuant to the aforesaid Writ of Replevin, of the gas stove and stereo which the Plaintiff had purchased from this Defendant under and pursuant to the contracts entered into by and between the Plaintiff and this Defendant, true copies of which are attached to the aforesaid Stipulation of Facts as Exhibits A and B and to the Plaintiffs' original Complaint as Exhibit A.

15. This Defendant affirmatively avers and alleges that under and pursuant to the provisions of the contracts entered into by and between the Plaintiff and this Defendant, true copies of which are attached to the aforesaid Stipulation of Facts as Exhibits A and B and to the Plaintiffs' original Complaint as Exhibit A, the title to the articles described therein and the right of posses-

sion thereto remained in this Defendant until all payments required thereunder had been made by the Plaintiff to this Defendant and in the event of default in any payment required thereunder to be made by the Plaintiff to this Defendant, this Defendant had the right and option to take back the articles described therein; that the Plaintiff did fail to make unto this Defendant the payments required therein to be made by her to this Defendant, and upon such failure, this Defendant exercised its right to take back the articles described therein and did, by the aforesaid replevin action, cause the articles described therein to be repossessed and replevied under and pursuant to the provisions of Chapter 78, Florida Statutes, by the filing of the aforesaid replevin action in the Small Claims Court for Dade County, Florida, and the Plaintiff did, as a prerequisite to the issuance and service of the aforesaid Writ of Replevin therein, file with the Clerk of the Small Claims Court for Dade County, Florida, a Replevin Bond, true copy of which is attached to the aforesaid Stipulation of Facts as Exhibit E, in an amount and containing conditions which fully complied with the provisions of Section 78.07, Florda Statutes; and that the provisions of Chapter 78, Florida Statutes, are neither on their face or as applied to the Plaintiff under the facts giving rise to this action in violation of the Fourth or Fourteenth Amendment of the United States Constitution or any other provision of the United States Constitution.

WHEREFORE, the Defendant, FIRESTONE TIRE AND RUBBER COMPANY, demands judgment in its favor and against the Plaintiff and that the Plaintiff's Second Amended Complaint be dismissed with prejudice to and at the cost of the Plaintiff.

MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE
Attorneys for Defendant, Firestone Tire and Rubber Company
1600 First National Bank Building
Miami, Florida 33131

By /s/ George W. Wright, Jr.

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN
DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1359-Civ-WM

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFF

—*vs*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

AFFIDAVIT OF VINCENT G. MORGAN IN OPPOSITION TO RENEWED MOTION FOR SUMMARY JUDGMENT—Filed June 1, 1970

VINCENT G. MORGAN, being duly sworn, deposes and says:

That I am fifty-eight years of age, a resident of Akron, Ohio, and have been employed twenty-seven (27) years by The Firestone Tire & Rubber Company. My present title is Manager of Retail Credit. In this capacity, I am directly responsible for the formulation of retail credit policy, and the administration of Firestone's fifty (50) regional district Credit Managers and credit personnel in some 1064 Firestone Retail Stores. My staff is further responsible for the provision of information, consultation services, and model procedures for credit transactions to some 50,000 Firestone dealers throughout the United States. I am incumbent President of Merchants Research Council, Inc., Chicago, Illinois, a national organization engaged in the study and research of consumer credit affairs and the recommendation of national and state consumer credit legislation.

This affidavit is made in opposition to the plaintiff's Renewed Motion for two reasons: The first is that the granting of this Motion would create a serious imbalance

between the legitimate rights of retailers and those of purchasers. It must be borne in mind that the transaction under consideration is entered into entirely voluntarily by the purchaser. In such transaction, the title and ownership of the property is in the retailer until full payment therefor is made, while the right to possession and use of the property is in the purchaser, provided the required payments are timely made. The State of Florida, as is the case in most states, is extremely zealous in its prevention of misuse of its extraordinary remedies. For this reason, the retailer must exercise the utmost precaution in proceeding to repossess his property as he is subject not only to forfeiting on his bond, but is also subject to the sanction of compensatory and even punitive damages if he exceeds the strictly defined remedy in the slightest degree. By contrast, if repossession by replevin writ before judgment be not permitted, no assurance, by bond or otherwise, would be provided against the wear or misuse of the property pending a hearing on the repossession. To require the retailer to forgo his right to repossession of his property in time to salvage any value thereof, would create an obvious imbalance in the rights and equity of the parties.

Secondly, I believe that an adverse decision of this Court would have serious socio-economic implications affecting (1) The retailer; (2) the consumer; and (3) the economy and national well-being. *Retailer's Viewpoint:* Considered from the retailer's viewpoint, an estimated seventy percent (70%) of all retail sales of durable goods are credit transactions. While there is some variation in this figure among different categories of retail goods, the figure tends to hold constant across the spectrum of large, medium, or small retailers. With this percentage of total sales involved, it becomes obvious that a sound credit structure, which necessarily includes adequate creditor remedies, is essential to the continued viability of both large and small business retailers.

In Florida, as in a majority of states, the legitimate retailer must extend retail credit within a rate ceiling which is usually established by state statutes at one and one-half percent (1½%) per month, or eighteen percent

(18%) per annum. This figure is not overly adequate when it is appreciated, that the retailer's "cost" of the credit transaction must consider and include the availability and cost of short or long term wholesale money (approximately 11.8%) representing his investment in carrying the merchandise for the period of the deferred payment; the fixed cost of a credit investigation; the expense of printing of forms; monthly mailing expenses; computer or clerical expense; the costs of recruiting and training a field credit staff and the salaries or wages to maintain such a staff in the field; advertising and promotional expenses of retail credit; other incidental expenses such as telephone, telegraph, travel, etc.; legal fees and other collection expenses; "bad debt" write-offs and losses on resale of repossessed merchandise; necessary membership fees in national and state associations which provide credit information (e.g., local rates, income trends, pending legislation, etc.); vulnerability to catastrophic losses due to floods, conflagration, prolonged labor strikes, or other local disasters; a proportionate allocation of fixed overhead expenses; comparative return on credit sales versus return on income or growth securities, and other competing demands on available corporate capital. Depending on their ability to manage these costs, many retailers operate at or below their fixed cost of the credit transaction.

While it is accepted that repossession of consumer goods will almost invariably result in loss to the retailer, critical to the retailer is the necessity of controlling the amount or percentage of such losses within limits which will permit him to continue to make credit sales, which, in our present economy, can be tantamount to continuation in the retail business. Under our present credit system there are four principal factors which control or limit the percentage of loss on repossessed merchandise:

(a) Probably the most important factor is that in the vast majority of cases of default, the debtor will voluntarily return or surrender the merchandise. The inducement for this voluntary return is the debtor's appreciation that the creditor has the legal right to recapture

the goods promptly in any event, supported by his desire to avoid legal expense, and, in some cases, loss of credit rating.

(b) The next most important fact is that under our present credit system the creditor has an effective means of recovering the goods and liquidating the indebtedness in some approximate relation to the rate at which the collateral depreciates. Stated in other words, in a percentage of credit sales, which is particularly high among low income "high risk" credit purchasers, the retailer must look solely to his goods now in possession of the purchaser as security for payment of their price. In the event of repossession, these goods must be sold in what is at best a thin market due to the strong consumer preference for newness per se, technological improvement resulting in rapid obsolescence of the goods, normal wear and tear of the goods in the hands of the purchaser, abused goods or the suspicion that the goods may have been misused, rendering their fitness questionable, loss of new goods warranties, etc. As this market diminishes in inverse ratio to the increased age and worn condition of the goods, in the event of a default, and after recognition that repossession is the only course available, it is imperative that repossession not be delayed in order that the salvage value of the goods can be realized and applied to the indebtedness.

(c) The third factor limiting the retailer's rate of loss is that the money realized by resale of the repossessed goods can be reinvested in income producing goods, thereby offsetting a portion of the remaining loss.

(d) The fourth factor which controls the rate of loss on repossessed goods is the fact that, whether voluntarily returned or recovered by the use of summary process, the goods can be recaptured without expenditure of substantial legal fees and court costs, which, in some cases, exceed the retail cost of the goods, and are never entirely recoverable even after judgment.

It can be seen that each of the above factors depends upon the retailer's remedy of summary repossession. Were the remedy lost, the defaulting debtor would be sheltered by the law while utilizing the entire service-

able life of the product which has not been paid for. For this reason, and the fact that it would soon be commonly appreciated that in many cases the retailer's legal expenses exceeded the value of the debtor's obligation, there would be little inducement to surrender or return the goods voluntarily. This, in turn, would result in an appreciably higher percentage of defaults. In such defaults, were a trial required in each case before repossession, it is obvious that the retailer could salvage no part of his loss due to the protracted court calendars in this Country, or recoup any loss through reinvestment.

To the retailer carrying his own accounts, losses would be fixed at the value of the goods plus his expenses of having made the credit transaction. However, to the retailer with insufficient volume to carry his own accounts, or who is in need of a more rapid cash flow, and must, therefore, discount his paper, it is foreseeable that the bank or other purchasing financial institution will severely increase the rate of discount, thereby diminishing or eliminating profit on the sale itself, or will, in the minimum, insist on the retailer endorse his paper. If the paper is endorsed by the retailer, in addition to his other losses on the transaction, he will also be liable to the lending institution for the retail credit charge.

Similar endorsement would undoubtedly be required by banks on three-party credit card transactions, which are increasingly used in retail credit selling.

The implication of loss of this remedy to wholesale financing must also be considered. Many retailers rely almost exclusively on suppliers' financing in the form of consignment or other floor plans to provide their entire retail inventories. It should be appreciated that many of these inventory financings involve substantial sums of money, which are secured by the inventory and accounts receivable generated therefrom. Were there interposed any substantial delay to the supplier's right to prompt repossession of inventory in possession of the retailer, or dilution of the value of the generated receivables due to a delay in their enforcement, no supplier could afford to continue inventory financing of marginal retailers.

The serious consequences of loss of the remedy of summary repossession to all retailers is obvious. The marginal retailer who must rely upon supplying inventory financing could not continue in business. Also, the retailer, operating under our present credit system at or below his cost of credit sales, if confronted by an increased rate of loss from repossession, must either increase his prices to a noncompetitive level, or restrict his extension of retail credit, thereby curtailing his sales volume. The inevitable result of either choice is to accelerate business failure. This would be particularly true with respect to hundreds of thousands of retailers operating with a small volume of "large balance" accounts (which can absorb the fixed cost of credit and justify the legal expense of collection), proportionate to a large volume of "small balance" accounts which cannot absorb fixed credit costs or justify the legal expense of their collection.

The net result of the above is that the many small or marginal retailers could not afford to continue in the retailing business, while larger more soundly financed retailers will unquestionably pass this burden onto the purchaser.

Consumer's Viewpoint: Anyone who has seriously thought through the economic implications of this case would appreciate that continuance of the remedy of summary repossession is advantageous to all consumers, and absolutely essential to consumers such as the named plaintiff in this case.

As one person in position to determine the reaction of business to loss of the remedy under consideration, it is my judgment that large proprietary retailers will continue to engage in the extension of retail credit, but will confine their credit sales to high or middle income consumers with demonstrated credit ratings. While perhaps smaller retailers will be competitively forced to accept somewhat more marginal credit risks; clearly, the low income consumer, who is most in need of retail credit would not find such credit readily available at lawful rates. As this class of consumer cannot easily convert, or in some cases ever adjust, to a cash economy, they

will be forced to look to the small loan company with national rates approximating thirty-six percent (36%) per annum. Failing to qualify for, or exceeding the limits of, credit approval from that source, this class of consumer would be forced to borrow from "loansharks" who illegally loan at rates as high as 500% of the obligation, or be forced to trade with low-income market retailers, or "Ghetto Merchants", at grossly inflated prices which are sometimes in excess of 150% of current market prices.

While occasioned by a different cause, the "Arkansas experience" demonstrates the above eventuality. In that State, a flat constitutional prohibition of any type of financing charge, either in sale or loan credit, in excess of 10% per annum, was applied by the Supreme Court of Arkansas to upset the long honored "time-price" doctrine in retail credit sales. As documented by the University of Arkansas, almost immediately after that decision all legitimate loan companies vacated the State, retailers increased their prices substantially over their prices in all neighboring states (adversely affecting traditionally cash as well as credit customers), and illegal loansharks moved in number into the State and seized complete hold on the low income consumers' credit needs. See Lynch, *Consumer Credit at Ten Per Cent Simple: The Arkansas Case:* Vol. 1968 No. 4, University of Illinois Law Forum, pp. 544-620; Board of Student Advisors: *An Empirical Study of the Arkansas Usury Laws.*

For illustration of the abuses of forcing low income or other high risk consumers to trade with "Ghetto Merchants", see the Federal Trade Commission's *March, 1968 Economic Report on Installment Credit and Retail Sales Practices of District of Columbia Retailers.*

A fallacious impression which should be corrected is that business can or will absorb this additional cost in its existing profit margins. Many industries (such as the tire industry which has had an historical profit level of 3½%) simply cannot absorb this cost in their present profit margins. With respect to other industries, it is axiomatic that the motive of maximizing profits is im-

plicit in an entrepreneur economy, which is epitomized by retailing. Such industries, already caught between increased material, money and labor costs and a quiescence in retail purchasing, will not absorb this cost, but will pass it on to the consumer in the form of increased prices in consumer durables. The basic economics involved predetermines this result.

Another consumer disadvantage is the fact that insofar as it is necessary to absorb additional credit costs into inflated prices, the consumer will not know the true cost of credit in frustration of the entire purpose of the Federal "Truth in Lending" Act.

It should also be recognized that in the case of some low and middle income consumers, the installment credit purchase is the only form of saving, albeit enforced, used by such consumers. Their entire assets are acquired in this manner, and the mortgage of these assets their only means of borrowing money in emergencies. If retail credit is no longer available to such consumers, it is unlikely that this type of consumer will establish any net worth; and, even if a net worth were established, it is improbable that any lending institution will loan against such security without this remedy available.

Also, under our present system the consumer is advantaged by timely repossession which reduces the extent of his indebtedness. Insofar as credit risks would be assumed without this remedy, it would be my judgment that if the obligation were defaulted on, retailers, lacking other remedy, will be forced to pursue their legal remedy for judgment on the obligation, which would mean a material appreciation of expense to the defaulting debtor who will ultimately pay the full obligation, interest, and court costs.

Moreover, under our present system, it is possible for consumers who have defaulted on a retail obligation in the past to reestablish themselves as acceptable credit risks, due, in large part, to the availability of the remedy under discussion. Necessarily, therefore, without this remedy, controlling emphasis must be placed upon prior credit performance. In most cases, this fact will preclude reestablishment of credit. To a limited extent,

this alternative can be foreseen by comparing the low rate of credit application rejection in Illinois, which has adequate creditor remedies, with the substantially higher rate of credit application rejection in Texas which has inadequate creditor remedies.

Finally, we are not so callous as to ignore the fact that in small towns and rural areas throughout the United States, there are many low income consumers or pensioners who cannot afford automobiles, elderly people, people with physical disabilities or who for other reason must deal exclusively with nearby local retail merchants. As such retail operations are more often than not marginal, and, therefore, the most likely to fail, an improvident decision in this case could impose a very serious physical inconvenience on the class of purchasers mentioned.

The only alternative to the above consequences would be to increase maximum permissible retail credit rates. While this may appear superficially fair in that it places the increased costs on the credit purchaser as opposed to the cash purchaser, it must be considered that it would penalize the prompt paying credit buyer with a higher credit rate than his credit risk warrants. In any event, it is doubtful that any such legislation will be enacted in the foreseeable future.

National Effects: As evidenced by recent events, credit availability is delicately and responsively interrelated with virtually every facet of our economy. To disturb the balance of the existing credit structure can have immediately amplified repercussions on employment, production, stock prices, inflation, welfare, and, indeed, our entire standard of living. While it is, of course, impossible to foresee every consequence of disturbing so sensitive a mechanism as retail credit, it is my judgment that, in the least, the following aspects of our economy would be influenced: (a) Retailing in this Country would be forced, not into a cash economy, but into what could be an unreasonably restricted credit economy, which would result in an appreciable increase in the failure rate of small and marginal retailers; (b) A portion of the sales

of failed retail businesses would presumably be absorbed by larger retailers, adding to further economic concentration, which is not favored in our current antitrust philosophy; (c) There would be an increase in retail prices of consumer durables, which would contribute to our already serious inflationary spiral; (d) There would be a marked increase in "loansharkism" and other illegal credit practices; (e) Ghetto marketing's gross profits are 71% higher than proprietory retailers, which makes it an impressively profitable business. The expansion of this form of marketing would be encouraged by loss of the remedy under consideration to proprietory retailers; (f) There could be an increase in the number of collection cases which would add to court congestion; (g) The purpose of a major piece of consumer legislation, the Federal Truth in Lending Act, would be frustrated; and (h) The quantity of retail credit at lawful rates available to families with incomes under $4,000.00 will be minimal. The standard of living of families with incomes in the range of $5,000.00 to $12,000.00 would be unavoidably lowered. Indeed, due to the improvident saving habits of many consumers in this income bracket, they could be denied what may be regarded as essentials such as automobiles used to get to and from work, furniture for their families, etc., as well as work-saving and luxury appliances. By way of illustration, in the United States, there is one automobile for every 2.9 persons, in contrast with one automobile for every 369.4 persons in Russia, where retail credit is not general available.

Viewed in a broader contrast, this Country's prosperity is based upon our relatively lower cost of food which has a larger portion of our income for the purchase of durables; mass production resulting a lower per unit cost, and the availability of retail credit which supports the market into which these goods are sold. A restriction in the availability of retail credit will slow the growth rate of sales of consumer durables. While only a percentage of this loss need be permanent, there will be an immediate more sizeable loss in retail sales during the period of conversion to the more restricted credit

economy, or, in the case of the low income consumer, conversion to a cash economy. This loss will occur in the context of an already severe quiescence in our economy, and could have disproportionate by amplified effect on production decreases and over-inventory situations in basic manufacturing. In this respect, it should be appreciated that the availability of retail credit is not only an important, but in the opinion of some reliable economists, determinative factor in schedule mass production. In convincing support of their position, these economists cite Japan's emergence as the second largest auto manufacturer in the world as due not to her labor advantage, but due to her broad adoption of retail credit. Whatever the merit of this example, it would be dangerous to refuse to recognize that the relationship between available retail credit and scheduled mass production is sufficiently direct that our economy will be materially slowed by any factor undermining the availability of retail credit. With every slowing of the economy there is a concommitant increase in unemployment. As unemployment invariably proceeds from hourly workers, to low-paid clerical help, and then to middle income satellite skills, the effect of any slowing of our economy is most felt by the low-income consumer most in need of credit. The cyclic effect is obvious.

To recapitulate, the granting of this Motion would flout very settled law, and is unnecessary to effect any justice in the premises. It would, moreover, create a serious imbalance between the rights and equities of re-retailers and those of purchasers. In addition, considered as a matter of economic reality, it would result in placing small and marginal retailers in serious jeopardy. It would result in still more serious injury to purchasers, particularly the lower income purchaser most in need of retail credit. It could not help but harm our economy, standard of living and national well-being.

/s/ Vincent G. Morgan
VINCENT G. MORGAN

SWORN TO AND SUBSCRIBED before me this 1st day of June, 1970 at Miami, Dade County, Florida.

/s/ Dolores Smothers
Notary Public,
State of Florida at Large

My Commission Expires:

Notary Public, State of Florida at Large
My Commission expires Mar. 8, 1971
Bonded by Transamerica Insurance Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 69-1359-Civ-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFFS

vs.

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

OPINION—August 21, 1970

Before DYER, Circuit Judge, and MEHRTENS and EATON, District Judges.

DYER, Circuit Judge:

Plaintiff brought this suit against Firestone Tire and Rubber Company (Firestone) and the Attorney General of Florida [1] for declaratory and injunctive relief against continued enforcement of certain sections of Florida's replevin statute, F.S. § 78.01, et seq., alleging that they are unconstitutional in that they authorize a taking of property without prior opportunity to be heard in contravention of the Due Process Clause of the Fourteenth Amendment and they authorize a search and seizure without the necessity of a search warrant in violation of the Fourth Amendment. Jurisdiction is founded on 42 U.S.C.A. § 1983 and 28 U.S.C.A. § 1343(3). A three judge court was convened. Testimony has been heard by the Court and a stipulation of facts and briefs have been

[1] Also named as defendants were the sheriff and deputy sheriff of Dade County, who were charged with the responsibility of executing the writ of replevin upon which the instant controversy centers. This Court previously granted a motion to dismiss them as defendants.

filed. Plaintiff has moved for summary judgment. Having considered all the evidence and arguments the Court denies plaintiff's motion for summary judgment and, deciding the case on the basis of the record before it, enters judgment for the defendants.

In June, 1967, plaintiff purchased from defendant Firestone a gas stove. In November, 1967, she purchased a stereo set from Firestone. Both purchases were made under conditional sales contracts which provided in part that "in the event of default of any payment or payments, Seller at its option may take back the merchandise". On September 15, 1969, several months after plaintiff had fallen behind in her payments in the total sum of $204.05 and had received notice to pay or return the merchandise, Firestone, pursuant to the procedure authorized in the statutes now under attack, submitted a complaint and affidavit in replevin in the Small Claims Court of Dade County, Florida, and posted a replevin bond.[2] The Small Claims Court issued a writ of replevin immediately which was executed without prior notice to plaintiff by a deputy sheriff on September 15.

The facts surrounding the actual execution, taken most favorably to plaintiff, show that the deputy sheriff had a communications problem with plaintiff since she spoke little or no English. Gradually, however, he was able to communicate his purpose and the effect of the writ. At this point, plaintiff's daughter-in-law, who lived in the same house with plaintiff, became "upset and emotional" and protested the repossession. She sent for Mr. Leon, the plaintiff's son-in-law, to assist her and the deputy agreed to wait. When Mr. Leon arrived he explained to the deputy in English that his attorney had advised him that a court proceeding was necessary before the merchandise could be repossessed and that, on his advice, he was not going to give up the property. The deputy "explained the effect of the writ to Mr. Leon, that he was obliged to repossess the stove and stereo in

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[2] Further proceedings in the Small Claims Court have been stayed pending the outcome of this federal suit.

accordance with its terms."[3] Mr. Leon then agreed to the repossession and let the deputy, who until then had been standing outside on the front porch, and the two men from Firestone, who had been waiting outside in their truck until this time, into the house and showed them where the merchandise was located.

Shortly thereafter plaintiff filed the instant action. Although she admits delinquency in the payments she alleges that she has a meritorious defense to the repossession—apparently that the stove was mechanically defective and that Firestone has failed to make satisfactory repairs.

The specific sections of the Florida replevin statute which plaintiff attacks are F.S. §§ 78.01, 78.08, 78.10, 78.11 and 78.12.[4] Under these sections a person whose goods are wrongfully detained may, by posting a bond in twice the amount of the value of the property, have a writ of replevin to recover them (78.01, 78.04 and 78.07). The writ commands the executing officer to replevy the goods and to summon the defendant to answer the complaint (78.08). In executing the writ the officer shall publicly demand delivery of property secreted or concealed in any dwelling house or other building and if it is not then delivered he shall cause the building to be broken open and, if necessary, he shall take to his assistance the power of the county (78.10).

Relying primarily on *Sniadach* v. *Family Finance Corporation*, 1969, 395 U.S. 337, which held that Due Process requires a prior hearing before wages may be garnished, and *Goldberg* v. *Kelly*, 1970, —— U.S. —— [No. 62, March 23, 1970], which held that due process requires a prior evidentiary hearing before a State may terminate welfare payments, plaintiff contends that the Fourteenth Amendment prohibits a conditional seller from repossessing property without giving the vendee

[3] Quoting from the stipulation of facts.

[4] F.S. §§ 78.11 and 78.12 are not really in issue here as they provide for replevin of property which has changed possession or has been removed from the jurisdiction of the court. Neither situation is involved here. Section 78.10 is not in issue either as will be seen later in this opinion.

the benefit of a prior hearing. We find neither case applicable to the replevin situation under scrutiny here.

The Tenth Circuit was recently faced with a similar Due Process objection to the Oklahoma replevin statute in *Brunswick Corporation* v. *J & P, Inc.*, 10 Cir. 1970, 424 F.2d 100. Brunswick had sold bowling equipment to a bowling alley under a conditional sales contract. When the purchaser defaulted in payments Brunswick filed an affidavit for replevin and a replevin bond. The United States Marshal took possession of the equipment in the bowling alley building by rendering it inoperative by removing some essential parts. He then made constructive delivery to Brunswick who advertised the equipment for sale and sold it at public auction, after execution of the writ but before judgment was obtained in the replevin action. The Tenth Circuit rejected the Due Process attack on Oklahoma's replevin statute and we are in complete agreement with its reasoning:

> [W]e find no merit in appellants' additional contention that under the recent Supreme Court case of Sniadach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969) they have been the victims of a taking of property without the procedural due process required by the Fourteenth Amendment. Sniadach expressly was a unique case involving, "a specialized type of property presenting distinct problems in our economic system." That case involved wage garnishment without notice or hearing prior to judgment on a promissory note. It is not in the least comparable to the case here on appeal involving enforcement of a security interest. Appellants have contractually agreed that, upon default, their creditor Brunswick "* * * may take immediate possession of said property [collateral] * * * [in the event of default]." Appellants admit that they were in default on the conditional sale, so they cannot now be heard to object to the default procedures they agreed to simply because Brunswick did utilize the legal process of replevin under bond." *Id.* at 105.

Plaintiff attempts to distinguish *Brunswick* on the ground that there two commercial parties had executed the conditional sales contract while in the instant case a commercial party and a private individual have contracted together. This is a distinction without a difference as far as Due Process is concerned. Plaintiff also attempts to distinguish *Brunswick* on the ground that the buyer there admitted "default" on the conditional sale. Plaintiff contends that "default" is a technical term which goes beyond plaintiff's admission in this case of delinquency in payments. Plaintiff argues that if there has been a breach of contract by the seller (which she maintains there is) she cannot be in "default" for failure to make payments. Even assuming (without deciding) that this would ordinarily be so under state law, the contract between plaintiff and Firestone does not give Firestone the right to repossess in the event of mere "default"; it gives Firestone that right in the event of "default *of any payment or payments*". (Emphasis supplied). The contract thus defines "default" in terms of the seller's remedies if the buyer was behind *in payments* and plaintiff admitted delinquency in her payments.

Nor do we think that *Goldberg* v. *Kelly*, *supra*, (which had not yet been decided on the date of the *Brunswick* decision) is of any assistance to plaintiff. Again, a special type of property was involved—welfare payments by the State:

> "Suffice it to say that to cut off a welfare recipient in the face of . . . 'brutal need' without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it."

Id. at p. 6 of slip opinion (quoting three-judge district court opinion). The hardships facing the welfare recipient, like those facing one whose wages are garnished, are not present in the instant situation where goods purchased are replevied. Furthermore, the welfare situation is not at all comparable to a private contract providing for enforcement of a security interest.

In sum, we think that despite *Sniadach* and *Kelly* there are still situations in which prejudgment seizure

of goods without a prior hearing is valid, see *Sniadach* at 340, and that replevin pursuant to a contract which authorizes a conditional seller to repossess in order to protect his security interest in the goods which are the subject of the contract is one of those situations.

We also think the conditional sales contract in the instant case is dispositive of the Fourth Amendment question. We disagree with plaintiff's contention that the broader implications of cases like *Camara* v. *Municipal Court*, 1967, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930, and *See* v. *City of Seattle*, 1967, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (both holding the Fourth Amendment search and seizure provisions applicable to administrative inspections) vitiate the vitality of *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 1856, 59 U.S. 272, 285, 15 L.Ed. 372, which said that the Fourth Amendment "has no reference to civil proceedings for the recovery of debts". But even assuming *arguendo* that the Fourth Amendment search and seizure provisions would otherwise apply to the issuance of summary civil process to satisfy a debt as contended by plaintiff, the essence of the contract in issue here is that one party may enter the premises of the other (whether by himself or through an officer who is executing a writ of replevin) in order to repossess property in which he has an interest. It may be that a forcible entry under these circumstances, pursuant to F.S. § 78.10, would not be legal or constitutional. But that is not this case and we do not decide this question.

This case involves a peaceable entry. Admittedly, plaintiff was reluctant to allow the entry. However, this fact does not change the character of the entry from peaceable to forced. Mr. Leon, who was speaking for the plaintiff, allowed the deputy to enter plaintiff's house to repossess the goods after the deputy explained the effect of the writ to him. Thus, the issue really boils down to this: Whether, absent authorization to break down the door or otherwise enter forcibly, the Fourth Amendment prohibits parties to a conditional sales contract from contracting for peaceable repossession. We think the answer is obviously an emphatic no. The Fourth Amendment does not prevent private parties

from contracting, as the plaintiff here did, that one may peaceably enter the other's house.

Plaintiff has cited to the Court many cases relative to both her Due Process and Fourth Amendment claims. Many of them are state cases which hold that *Sniadach* goes beyond wage garnishment to garnishment of any funds and that the presence of a bonding requirement (which was absent in *Sniadach*) before prejudgment garnishment is allowed is not a substitute for a prior hearing. We do not think any of these cases affect the result we reach on the Due Process issue because none deal with the enforcement of a security interest pursuant to a contract provision authorizing it. *Blair* v. *Pitchess*, No. 942, 966 Cal Super. Ct., May 12, 1969 (final order entered November 25, 1969) did hold California's claim and delivery law unconstitutional on both Due Process and Fourth Amendment grounds. No authority was cited in that case, however, and, to the extent that *Blair* may be read as conflicting with our decision today, we disagree with it.

We hold that the Florida replevin statute, F.S. § 78.01 et seq., to the extent that its provisions were before the Court by virtue of an actual controversy in this case, is constitutional. The declaratory and injunctive relief sought by the plaintiff is denied and judgment will be entered for the defendants.

EATON, J. (dissenting).

I respectfully dissent. I believe the question of the constitutionality of F.S. § 78.10 is before the Court and that the pre-judgment replevin procedure established by F.S. §§ 78.01, 78.04, 78.07, 78.08 and 78.10 lacks the essential elements of due process.

When the state authorizes the forcible entry of a person's house prior to the establishment of the probable validity of a creditor's claim, it contravenes the Due Process Clause of the Fourteenth Amendment.

Further, when one signs a contract which includes the words "in the event of default of any payment or payments, seller at its option may take back the merchandise," he does not waive his Fourteenth Amendment right to "due process of law."

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN
DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1359-Civ-WM

(Three Judge Federal Panel)

[File Endorsement Omitted]

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFF

—*vs*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

FINAL JUDGMENT FOR DEFENDANTS—September 9, 1970

The Court having considered the pleadings, exhibits and affidavits on file in the above entitled cause and the facts stipulated to between the parties as contained in the stipulation of facts between them bearing date April 29, 1970 and filed in the above entitled cause on April 30, 1970 and the testimony, evidence and exhibits adduced before the Court at the evidentiary hearing held on May 22, 1970, as well as the brief submitted and filed by Plaintiff, Defendants and amici curiae, through their respective counsel, and the Court having filed its opinion in the above entitled cause on August 21, 1970, wherein the Court denied Plaintiff's motion for summary judgment and directed that judgment be entered for the Defendants, it is, thereupon,

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. Plaintiff's motion for summary judgment be and the same is hereby denied.

2. Final judgment be and the same is hereby entered for and in favor of the Defendants and against the Plaintiff, and the Plaintiff shall take nothing by this action and the Defendants shall go hence without day and shall recover of and from the Plaintiff their costs, if any, expended herein, which shall be taxed by further order of the Court upon motion of the Defendants.

DONE AND ORDERED at Miami, Dade County, Florida, this 8th day of September, 1970.

/s/ David W. Dyer
DAVID W. DYER
Circuit Judge

/s/ W. O. Mehrtens
WILLIAM O. MEHRTENS
United States District Judge

/s/ Joe Eaton
JOE EATON
United States District Judge

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 69-1359-Civ-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFF

—*v*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that MARGARITA FUENTES, plaintiff, hereby appeals to the Supreme Court of the United States from the final order denying plaintiff's motion for summary judgment and entering final judgment in favor of the defendants and against plaintiff, entered in this action on September 8, 1970.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

BRUCE S. ROGOW
DONALD C. PETERS
RENE V. MURAI
Legal Services Program, Inc.
3600 Grand Avenue
Coconut Grove, Florida
305—446-5931

C. MICHAEL ABBOTT
2837 Pittsfield Boulevard
Ann Arbor, Michigan 48104
313—971-0437

By: /s/ C. Michael Abott
C. MICHAEL ABBOTT

SUPREME COURT OF THE UNITED STATES

No. 6060, October Term, 1970

MARGARITA FUENTES, ET AL., APPELLANTS

v.

EARL FAIRCLOTH, Attorney General of Florida, ET AL.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

February 22, 1971

SUPREME COURT OF THE UNITED STATES

No. 6060, October Term, 1970

MARGARITA FUENTES, ET AL., APPELLANTS

v.

EARL FAIRCLOTH, Attorney General of Florida, ET AL.

APPEAL from the United States District Court for the Southern District of Florida.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 22, 1971

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 69-1359-Civ-WM

[File Endorsement Omitted]

MARGARITA FUENTES, individually, and as a class for all those similarly situated, PLAINTIFF

—*vs*—

EARL FAIRCLOTH, Attorney General for the State of Florida, and FIRESTONE TIRE AND RUBBER COMPANY, DEFENDANTS

The Central Court Room,
United States District Court,
300 Northeast First Avenue,
Miami, Florida.
Friday, May 22, 1970.

The above-entitled matter came on for hearing, pursuant to Notice and Special Appointment, commencing at 2:00 o'clock p.m.

BEFORE:

HON. DAVID W. DYER, Judge of the United States Court of Appeals for the Fifth Circuit; HON. W. O. MEHRTENS and HON. JOE EATON, United States District Judges.

[fol. 2]

APPEARANCES:

LEGAL SERVICES PROGRAM, INC.,
By: C. MICHAEL ABBOTT and DONALD C. PETERS, ESQS., On behalf of the Plaintiff.

MERSHON, SAWYER, JOHNSTON, DUNWODY & COLE, ESQS.,
By: GEORGE W. WRIGHT, JR., ESQ., On behalf of the Defendant Firestone Tire & Rubber Company.

* * * *

[fol. 3] JUDGE MEHRTENS: Gentlemen, I want to make an announcement. I have not discussed this with Judge Dyer nor with Judge Eaton. But so that everybody will know the situation, five years ago I was a Senior Partner in the firm of Mershon, Johnston, Simmons, Dunwody, Mehrtens & Cole. I have had no connection with them since I have been on the Bench, and I have no financial interest in the firm.

Nevertheless, Firestone Tire & Rubber Company has been a client of that firm for many years; and at times I did represent them in litigation. They, as you all know, were permitted to intervene in this action after it was filed.

If anyone has any objection to my sitting, I will be glad to hear from anybody who feels that I can't hear and decide this case fairly and impartially.

JUDGE DYER: Mr. Abbott?

MR. ABBOTT: The Plaintiffs have no objection to Judge Mehrtens sitting.

JUDGE DYER: The Attorney General's Office?

MR. TURNBULL: Sir, we do not object to you sitting on the Court. We do object to the jurisdiction of [fol. 4] the Court. And I will make a Motion at a later time. But as far as you are concerned, sir, we have no objection at all.

JUDGE DYER: Your subsequent Motion as to jurisdiction is not based upon any incapacity of Judge Mehrtens, is it?

MR. TURNBULL: It will never be based on the incapacity of Judge Mehrtens.

JUDGE DYER: Mr. Wright?

MR. WRIGHT: No objection, Your Honor.

JUDGE DYER: Is there any other party in interest that would like to either object or make a statement for the record or an observation as to the effect of Judge Mehrtens sitting in this case?

(No response)

THE COURT: All right. Thank you.

We are ready to proceed in this case to take the testimony of witnesses who may be produced by either party

on matters which are not covered by the Stipulation of Facts.

MR. ABBOTT: If The Court please, the Plaintiffs are ready. We are Michael Abbott and Donald Peters for the Plaintiffs. We are prepared to call three witnesses this afternoon, on two of which we will use the services of the [fol. 5] interpreter, Mr. Seligman of Associated Interpreters, Inc.

Before we proceed, Your Honors, I would like some instruction from The Court.

It is the Plaintiff's position—and I understand it is also the position of Firestone—that any testimony other than that already in the stipulation with regard to any breach of warranty by Firestone is immaterial to this action, to the same extent it would have been immaterial in Goldberg versus Kelly or Sniadach versus Family Finance Corporation.

It is our position that once the issue is joined, once we have established that complaints were made to Firestone, Firestone alleged repairs were made. Our client denies this. Firestone denies her allegations. That is as far as The Court need proceed regarding that question.

It would be improper for this Court to determine whether or not in fact the breach was made, just as the Supreme Court did not determine in Goldberg versus Kelly whether welfare rights were terminated rightfully or wrongfully.

I would like some instruction from The Court whether [fol. 6] they would wish testimony as to the breach of warranty.

JUDGE DYER: I'm not sure I follow you at all. Are you asking us whether or not there is a relevant consideration in this case with respect to the warranty concerning the icebox and the stove, et cetera?

MR. ABBOTT: What I am saying is that in the stipulation we have stipulated that Margarita Fuentes made certain complaints about the stove. We have stipulated there was a service policy on the stove.

JUDGE DYER: What does that have to do with the real issue in this case?

MR. ABBOTT: I think very little. I think the issue is whether, in fact—do you want testimony on this point? That was one of the questions on which we disagreed in the stipulation.

JUDGE DYER: We are of the view that has no relevancy to this question we are called upon to determine. We had no control over what you stipulated. You might have stipulated the moon is made of cheese. We don't have to consider matters that we don't think are relevant.

MR. WRIGHT: If I may, Your Honor, on behalf of [fol. 7] the Defendant Firestone, I concur with Mr. Abbott that any evidence or testimony with respect to an alleged breach of warranty by Mrs. Fuentes against Firestone with respect to either of the two articles of merchandise which form the subject matter of the replevin action is wholly immaterial to the issues involved in this lawsuit, for the reason that neither a breach of warranty nor failure of consideration is a valid defense under the laws of the State of Florida.

When we prepared the Stipulation of Facts which was ultimately filed with the Court, Mr. Abbott at that time asserted that Mrs. Fuentes did complain of difficulties with one of the two articles of merchandise involved, namely, the stove. We recited in the stipulation a dispute in that regard between his client (Mrs. Fuentes) and our client (Firestone) as to whether or not there was anything wrong and whether or not repairs were made or satisfactory repairs were made.

At the conclusion of the stipulation, both parties did reserve the right to object to any relevancy or object to the Court's consideration of any matters that were contained in the stipulation upon the grounds that they were [fol. 8] irrelevant or immaterial. That, of course, would be our objection to any testimony along that line. And apparently Counsel for the Plaintiff agrees that it is not material to the issues before this Court.

JUDGE DYER: I take it that you have just told us that you are agreeable with our ruling?

MR. WRIGHT: I am agreeing with it if it is the ruling that it is immaterial. I wholeheartedly agree, Your Honor.

JUDGE DYER: I thought that is what we announced, that we didn't attach any relevancy in connection with the questions posed for our consideration and determination.

MR. WRIGHT: Thank you, sir.

MR. ABBOTT: So that we can understand each other, what you are interested in is this circumstance surrounding the repossession of it, is that correct?

JUDGE DYER: We are interested, Mr. Abbott, in whatever proof you may desire to adduce to sustain the contention that you made that a portion, at least, of this statutue is unconstitutional.

MR. ABBOTT: It is my position that, in fact, all the [fol. 9] facts that you need to know are in that stipulation.

JUDGE DYER: Then there is no need to adduce anymore evidence? We are not going to try your case for you. We want to give everyone an opportunity to produce whatever evidence they think is relevant in this case with respect to the question that is posed to us; that is, whether or not the provisions of this statute which you have attest are unconstitutional.

Now, whatever evidence you desire to adduce in that connection we are here to hear and to rule upon it with respect to its relevancy to that issue.

MR. ABBOTT: Fine. If I may have a minute?

MR. TURNBULL: In the interim, may I be heard—I am from the Attorney General's Office—where he gets his witnesses from?

JUDGE DYER: Let's wait a minute until he has an opportunity to decide what he wants to do.

MR. ABBOTT: May it please The Court, if it is satisfactory with The Court, we would just as soon stay with the stipulation except to the extent that Firestone [fol. 10] today may introduce evidence or make it necessary for us to rebut it.

JUDGE DYER: All right, sir.

MR. ABBOTT: Thank you.

JUDGE DYER: Is Firestone going to introduce any evidence?

MR. WRIGHT: Yes, Your Honor.

JUDGE DYER: All right then.

You may proceed.

MR. WRIGHT: First let me, if I may, say to The Court that, as Mr. Abbott has stated, we filed with The Court a Stipulation of Facts pursuant to the request by The Court wherein there are only two or three disputes of facts to be decided between the parties. I think I can safely say that 95 per cent of the facts have been stipulated between Counsel for the Plaintiff and Counsel for the Defendants.

JUDGE DYER: We appreciate that.

MR. WRIGHT: So I will limit the presentation of the testimony here today solely to the two or three issues that are disputed or which are reflected by the stipulation to be in dispute.

First, we have subpoenaed to testify here before The Court today the Deputy Sheriff, Robert Arthur Williams, [fol. 11] of the Dade County Sheriff's Department, who had served and executed the Statement of Claim and the Writ of Replevin upon the merchandise in question. Deputy Williams, I was advised last Monday, is now ill in the hospital at the University of Pennsylvania Medical School in Philadelphia and is not able to get out of the hospital. He may possibly undergo surgery and we will not know until this weekend. Therefore, he is unable to attend the hearing today.

JUDGE DYER: What do you propose to prove by him, Mr. Wright?

MR. WRIGHT: Your Honor, I think I have resolved the matter by Mr. Abbott and I having signed this morning, which I would like to file with The Court, a Stipulation as to what Deputy Williams would testify to before this Court today. The Stipulation recites that Deputy Williams is deemed to have so testified before this Court today under oath.

JUDGE DYER: That is fine. We will accept the Stipulation.

MR. WRIGHT: I have an original and three copies for The Court.

We would next like to call Mr. Daley of Firestone Tire & Rubber Company as a witness. And we will try to

[fol. 12] make it very brief to cover only the points not covered by the Stipulation.

Thereupon

JOHN D. DALEY

was called as a witness in behalf of the Defendant, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q I am going to ask you to please speak up loudly so that The Court can hear you and all Counsel may hear you, if you will, please.

Will you state your full name and your address?

A John D. Daley, 1605 Southwest 90th Avenue.

Q Is that here in Miami?

A Yes.

Q What is your occupation, Mr. Daley?

A Office and Credit Manager for Firestone.

Q Is that Firestone Tire & Rubber Company?

A Yes.

Q How long have you been employed by Firestone?

[fol. 13] A Five and a half years.

Q Back in September, 1969, were you employed by Firestone?

A Yes.

Q And where were you employed? That is, what was the location of your place of employment and what was your capacity?

A Credit Manager for the Firestone Store at 1200 West Flagler Street.

Q Does that store have a store number?

A Yes. That is Number 2627.

Q Was that the store, Mr. Daley, from which Mrs. Fuentes in this case purchased the gas stove and the stereo?

A Yes.

Q Did you have occasion, Mr. Daley, to go to the residence of Mrs. Fuentes on the 15th of September, 1969,

in connection with the service of a Writ of Replevin upon the gas stove and the stereo?

A Yes, I did.

Q Did anyone accompany you to the premises of Mrs. Fuentes?

A Yes; Ricardo Rodriguez.

Q What was Mr. Rodriguez' capacity, if any, with [fol. 14] Firestone?

A He was a salesman.

Q And what position did you hold at that time?

A Credit Manager.

Q For that store?

A Yes.

Q At approximately what time did you arrive at the Fuentes residence?

A A quarter to five.

Q And did you have occasion to see or meet one Deputy Sheriff Robert Arthur Williams at this location?

A Yes, we did.

Q Did you precede Mr. Williams' arrival or did he precede yours?

A He arrived at the house before we did.

Q What type of vehicle were you in?

A We were in a company truck.

Q Upon your arrival at the Fuentes residence, would you tell The Court, please, exactly what you and Mr. Rodriguez did?

A We waited in the truck. We parked the truck in the driveway at the house and waited while Mr. Williams [fol. 15] went to the door and spoke with the people. We waited until he was ready for us to come to the house.

Q Were you in the truck when Deputy Williams went to the front door of the Fuentes residence?

A Yes, we were.

Q Were you able to observe him talking with anyone at the front door?

A We saw him at the front door, yes. We could not tell who he was talking to.

Q Could you tell whether or not it was an adult or a child or a man or a lady that he was talking to?

A I believe that he was speaking with a woman.

Q Did you later learn who that woman was?
A I believe it was Mrs. Delgado.
Q Do you know what her relationship is, if any, with Mrs. Fuentes?
A Daughter-in-law.
Q Can you tell The Court, please, approximately how long Deputy Williams remained on the front porch talking with this lady at the door?
[fol. 16] A Approximately three minutes.
Q Then, what did Deputy Williams do?
A He then went in the house.
Q Did you see anyone attempt to prevent him from entering the home?
A No.
Q Then, following his entry into the house, what did you and Mr. Rodriguez do?
A We waited in the truck for a short time. We then went to the front porch and waited there.
Q Did you enter the house at that time?
A No.
Q Approximately how long did you remain on the front porch outside?
A Ten to fifteen minutes.
Q Did anyone leave or come into the home while you and Mr. Rodriguez were on the front porch?
A Mrs. Delgado left. There were two other men that came in.
Q Approximately how long after you went on the front porch did the two other men enter the home?
A Approximately ten minutes.
Q Did they come into the home after Mrs. Delgado [fol. 17] left?
A Yes.
Q Did you have any conversation with either of these two gentlemen?
A No.
Q After these two gentlemen entered the home of the Fuentes residence—Did they enter the front door?
A Yes, sir.
Q How long did you remain upon the porch after that?

A Approximately five minutes.

Q Then what happened after that?

A Mr. Williams called us into the house, told us where the merchandise was that we were to pick up, which we picked up, put on the truck.

Q Where was the merchandise located?

A The stereo was in the livingroom; the gas range was on the back porch.

Q Did you have any conversation with anyone within the livingroom of the Fuentes residence when you went in to pick up the merchandise?

A No.

Q Was Mrs. Fuentes present?

[fol. 18] A Yes.

Q Did she raise any objection to you and Mr. Rodriguez picking up the stereo?

A No.

Q After picking up the stereo, what did you do with it?

A We loaded it on the truck and covered it as it was raining that day.

Q Then what did you do after loading the stereo on the truck?

A We then went around to the back of the house, around the outside, and got the range off of the back porch and loaded it on the truck.

Q Had Deputy Williams indicated to you earlier where the range was located?

A Yes, at the time we went in the house.

Q Was the porch on which the range was located an enclosed porch?

A No, it was not.

Q Was the range which you picked up and repossessed connected to anything?

A No, it was not.

Q Was this a gas range?

A Yes.

[fol. 19] Q Did you see another range or stove within the kitchen of the Fuentes residence?

A There was another one in the kitchen, yes.

Q What did you do with the range which you picked up off the back porch?

A We then loaded it onto the truck to leave.

Q Did you have any conversation with Deputy Williams before you left?

A Only that he asked me to sign a receipt for this merchandise; which I did.

Q Then where did you take the two pieces of merchandise—that is, the stove and the stereo?

A These were taken back to the store and put in the warehouse for storage.

Q Are they still maintained in storage at the Firestone warehouse?

A Yes, they are.

Q Let me hand you a document, Mr. Daley, and ask you if you can please identify this. That is, tell The Court, please, what that document is.

A This is the ledger card. It represents the credit application that Mrs. Fuentes made. There are several [fol. 20] here because she made several different purchases, several credit applications; and a complete list of all purchases and payments made to the store by her.

Q Does that include the reflection of a purchase and such payments as were made thereon by Mrs. Fuentes upon the gas stove and stereo which were replevined?

A Yes, it does.

Q Does it also include or reflect other purchases from Firestone by Mrs. Fuentes?

A Yes, it does.

Q Were these purchases all on a time payment basis?

A Yes.

Q Did the other purchases, other than the gas stove and the stereo, as reflected thereon, precede or succeed the purchases by her of the stove and the stereo?

A All other purchases preceded the purchase of the range and the stereo.

Q Was that record, while you were Credit Manager of the store, maintained in your custody and control?

[fol. 21] A Yes, it was.

Q And it is a record maintained by Firestone in the regular course of its business?

A Yes, it is.

MR. WRIGHT: If The Court please, we would like to offer this document into evidence as Defendant Firestone's Composite Exhibit.

MR. ABBOTT: We have no objection.

THE COURT: It will be admitted.

(Thereupon the documents referred to were received in Evidence as Defendant Firestone's Exhibit No. 1.)

Q (By Mr. Wright) Mr. Daley, for the information of The Court, will you, without reading any of the details upon Defendant Firestone's Exhibit No. 1, state what information is contained within each column on the front sheet and what that sheet represents as to that record.

JUDGE DYER: Mr. Wright, are you going to do this for the purpose of showing it was in default?

MR. WRIGHT: Your Honor, I think the situation shows there was a default.

The purpose, quite frankly, of my interrogation along [fol. 22] this line is to show that the stove and the stereo were not the first two time payment purchases made by Mrs. Fuentes. It is merely to show that she was acquainted with the nature of the time purchase and, secondly, to show in previous purchases she had been notified when she had been defaulted in payment.

JUDGE DYER: I guess the document indicates that, does it not?

MR. WRIGHT: Yes, sir. I didn't want him to read the details on it but merely for the information of The Court.

JUDGE DYER: We accept your statement that that is what the document shows.

MR. WRIGHT: Thank you, sir.

I would ask just one question, because I have two other documents for which this is a predicate.

Q (By Mr. Wright) With respect to Defendant Firestone's Exhibit No. 1, there appears on the reverse side of the third ledger sheet or ledger card and on the reverse side of the fourth and fifth sheets or the ledger

cards of this composite exhibit a column entitled "Contact Record." What is the significance of that?

A These show the dates of what action was taken [fol. 23] and the fact that there was a collection notice sent on these certain dates—either a Number One Notice or a Number Two Notice. And in several instances, it shows where phone calls were made regarding collection.

Q You've referred to a Number one Notice. Let me hand you a copy of a document and ask you if you can please identify that, sir.

A This is a Number One Notice.

Q Was that the type of notice referred to in Defendant's Exhibit No. 1 here?

A Yes.

Q Was that the type of notice that was utilized by that store at that time?

A Yes.

Q While I am here, let me hand you another document and ask you if you can please identify that, sir.

A This is a Number Two Notice.

Q Is that the same form of Number Two Notice referred to in Defendant Firestone's Exhibit No. 1 on the reverse side of sheets three, four and five?

A Yes.

MR. WRIGHT: We would like to offer these two [fol. 24] exhibits.

MR. ABBOTT: No objection.

JUDGE DYER: They will be admitted.

(Thereupon the documents referred to were received in Evidence as Defendant Firestone's Exhibits Nos. 2 and 3, respectively.)

Q (By Mr. Wright) Just one other question, Mr. Daley. At the time that you and Mr. Rodriguez were in the truck and Deputy Williams was at the front door of the Fuentes' home on the 15th of September, 1969, do you know whether or not or did you observe whether or not Deputy Williams had any papers or anything in his hand?

A He did have some papers in his hand, yes.

Q At any time while you were there that day, did Mrs. Fuentes or anyone else at the Fuentes' home object to you or to anyone in your presence or to Mr. Rodriguez picking up the stereo and putting it on the truck or picking up the stove and putting it on the truck?

A Not in my presence, no.

Q Just one other question, Mr. Daley. Just for the [fol. 25] record, will you identify on which sheet the date of purchase of the stove and stereo covered by the contract which is in the stipulation were purchased?

A The range would show on sheet number two and the stereo on sheet number one.

MR. WRIGHT: Thank you, sir. I have no further questions.

You may inquire.

CROSS EXAMINATION

BY MR. ABBOTT:

Q Mr. Daley, you've testified that you could not see who answered the door when the door was entered in response to Deputy Sheriff Williams, is that correct?

A That's correct, yes.

Q So that when you testified that the Sheriff went in, you don't know really who let the Sheriff in, if anybody did, is that correct?

A I don't know, no.

Q Do you know whether Deputy Williams spoke Spanish or not?

A Some, yes.

Q Do you know whether he spoke Spanish or English at the door?

[fol. 26] A I couldn't say.

MR. ABBOTT: I have no further questions.

MR. WRIGHT: We have no further questions.

JUDGE DYER: You are excused, sir.

(Thereupon the witness was excused.)

Thereupon

RICARDO RODRIGUEZ

was called as a witness in behalf of the Defendant Firestone and, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q Will you state your name and your address, please, sir?

A My name is Ricardo Rodriguez. I live at 9460 Southwest 37th Street.

Q Is that here in Miami?

A Miami, yes, sir.

Q By whom are you employed, Mr. Rodriguez?

A Firestone Stores.

Q How long have you been employed by Firestone?

A It is going to be close to four years; over three years and a half.

[fol. 27] Q You are employed at what location of Firestone?

A 1200 West Flagler Street.

Q Is that the same store that Mr. Daley referred to?

A Yes, sir; Number 2627.

Q In what capacity are you employed at the present time?

A At the present time I am Credit Manager for the store.

Q And how long have you served in that capacity?

A It's going to be about two and a half months.

Q Did you succeed Mr. Daley as Credit Manager in that store?

A Yes.

Q Were you employed and working at that store in the year 1969?

A Yes, sir.

Q To shorten this up, Mr. Rodriguez, did you hear the testimony given by Mr. Daley with respect to the

circumstances surrounding your and his visit to the Fuentes residence on September 15, 1969, at which time [fol. 28] the stereo and the stove were replevined by Deputy Williams and placed in the Firestone truck?

A Yes.

Q Would your recollection of the events as Mr. Daley testified to then be the same as his?

A Yes, sir.

Q Just one other question, please, Mr. Rodriguez: Prior to the institution of the replevin action by Firestone to replevin the stove and stereo purchased from Firestone by Mrs. Fuentes in Small Claims Court for Dade County, did you have occasion to talk with Mrs. Fuentes with respect to any payments which she owed Firestone for that merchandise?

A Yes, I did.

Q Do you know approximately how long before that you talked with Mrs. Fuentes?

A That was prior to the time we went to the house.

Q Can you tell me approximately how long before, if you can?

A Well, I would say about 15 days or something like that.

Q Would you tell the court the substance of the con- [fol. 29] versation you had on that occasion with Mrs. Fuentes:

A Well, I asked her when she was going to make the payments; and if not, we will have to repossess the merchandise and bring the merchandise to the store if she could not make payment.

Q What merchandise were you referring to?

A It was a stove and a stereo.

Q Was that the same stove and stereo which were sought to be replevined in the replevin action filed by Firestone against Mrs. Fuentes in the Small Claims Court for Dade County?

A Yes, sir.

Q Do you speak Spanish, Mr. Rodriguez?

A Yes, I do.

Q Do you speak both Spanish and English?

A Yes.

Q When you spoke with Mrs. Fuentes in this telephone conversation about which you testified, did you speak in Spanish or in English?

A I spoke in Spanish.

MR. WRIGHT: Thank you, sir.

You may inquire.

JUDGE DYER: Are there any questions, Mr. Abbott?

[fol. 30] MR. ABBOTT: We have no questions.

JUDGE DYER: You may step down.

(Thereupon the witness was excused.)

MR. WRIGHT: Thank you, sir. That is all the testimony that we have to offer in addition to the Stipulation of Facts and the Stipulation which we filed before you today.

JUDGE DYER: All right.

Now, Mr. Abbott, do you have any rebuttal?

MR. ABBOTT: We might. If we may have just a moment?

JUDGE DYER: Yes, sir.

MR. ABBOTT: Your Honor, we are not going to present any testimony.

JUDGE DYER: All right.

The Court understands that everyone who now desires an opportunity to introduce evidence in the case now has had full opportunity. The evidence is now closed.

As previously indicated—and I am sure the message was transmitted by the Clerk, the Motions that were filed and noticed for this hearing were cancelled as far as argument is concerned. The Court will consider those [fol. 31] Motions and rule on them in due course.

The Motion for Leave to File a Brief was granted with the Plaintiff given 15 days to reply with Defense Counsel given ten days to file a brief, on the record and on the papers in the cause.

The Court will recognize Mr. Jepeway. You got up just in time.

MR. JEPEWAY: Thank you, Your Honor.

I want to make one statement, with The Court's permission, before you adjourn. I represent Universal C.I.T. Credit Corporation, one of the amici.

I orally ask leave, on behalf of a new client who is very much concerned, the Industrial Bankers Association, to be permitted to enter the case amici curiae and to adopt the brief which has already been prepared on behalf of the amici curiae, to wit, General Motors Acceptance Corporation, Ford Motor Credit Corporation and Universal C.I.T. Credit Corporation, which will be filed on Monday and, with Your Honor's permission, I would like to state that this is a national association of more than 12,000 members throughout America with 392 members in the State of Florida who very seriously could adversely be affected by the outcome.

[fol. 32] JUDGE DYER: We will grant that.

MR. JEPEWAY: Thank you very much, sir.

MR. WRIGHT: Could I make a further inquiry of The Court as to whether or not there will be a further hearing to hear legal arguments concerning the Motion for Summary Judgment which Mr. Abbott has reviewed on behalf of the Plaintiff and which Your Honor, by this recent Order, held in abeyance pending this evidentiary hearing.

JUDGE DYER: I think that the best way to leave that at the moment, Mr. Wright, is that after we have had the advantage of briefs that are to be filed, yes, we will consider the case, and if we feel that it is necessary, then we will notify Counsel that are interested in this cause that we would like to hear arguments; and, if so, on what particular points. If the Court is satisfied that we don't need to hear argument, we won't, and we will just go ahead and rule.

So, unless Counsel hears from the Clerk that we desire argument, and I would suggest probably that if we do hear it—which I seriously doubt at this moment—but if we do, I think it would be preferable for us to indicate specific points or areas which we might want to hear argument on, if we do.

[fol. 33] MR. WRIGHT: If I may make one further inquiry before The Court, we, as Counsel for Firestone,

are in the process of preparing a brief on the constitutional questions. I think it is true to say that it is a difficult brief to prepare and there has no provision been made to when our brief should be filed and I didn't know whether Your Honor's intentions were that we file one by Monday. If that be the intention of The Court, I would beg leave of The Court for a few additional days to prepare and file that brief in The Court.

JUDGE DYER: How long do you think you will need?

MR. WRIGHT: I would like until a week from Monday, if possible, Your Honor.

JUDGE DYER: We will certainly grant that, and we will give opposing Counsel another 15 days on that brief.

MR. WRIGHT: Thank you, sir.

JUDGE DYER: Will that be enough, Mr. Abbott?

MR. ABBOTT: Yes, that will be enough. That will be fine.

JUDGE DYER: Then that ought to close the brief-
[fol. 34] ing schedule so that we will have them to take under advisement and see what we can do in this case during the summertime.

MR. WRIGHT: Thank you, sir.

JUDGE DYER: Thank you very much, gentlemen. Court will stand adjourned.

(Thereupon at 3:10 o'clock p.m., the proceedings in the above-entitled matter were concluded.)

[fol. 35] [Certificate of Reporter
(Omitted in Printing)]

GOOD PROSPECT FOR: 1 8

2627-002-1251
MARGARITA FUENTES
NAME
STORE HOLD

5 6 7 12 OTHER OTHER

ACCOUNT NO.

OPEN LIMIT (USE PENCIL) PHONE S

TERMS	1ST SALE	2ND SALE	3RD SALE	4TH SALE
AMOUNT OF PAYMENTS	9/6			
WHEN DUE				
HANDLING CHARGE	7			
NO MONTHS				

NAME Margarita Ayuela [illegible] 12980
ADDRESS 112 S. [illegible] 11th Ave
NEW ADDRESS

PAST DUE DATE	PAST DUE AMOUNT	DESCRIPTION OR CODE	P/F	DATE	REFERENCE NUMBER	REC. BY	PREVIOUS BALANCE	SALES	CASH PAYMENTS	BALANCE DUE
12-2	26.00			11-21	41213	BL	—	—	40 00	40 00
1-7	[illegible]			11-22	41263	DA	40 00			
		1-183706 stereo		11-22	41264	BL	40 00	516 22	—	476 22
		P.C. 91.60 (24) transfer from other card					476 22	136 53	[illegible]	612 75
2-2	8.00	90 Day Service		12-22	41028	BL	612 75	—	30 00	582 75
				1-3	41835	[illegible]	582 75		30 00	552 75
				2-6-68					30 00	522 75
				3-11-68					30 00	492 75
				4-9-68					30 00	462 75
				5-21-68					26 00	436 75
				6-5-68					6 00	430 75
				7-3-68					20 00	410 75
				7-15-68					208 70	202 05

AMOUNT PAID AHEAD 8.00

AMOUNT PAST DUE 1-30	31-60	61-OVER
------	------	------

2-2-68

516.22
91.60

180.53
20.67
159.86

7-15-68
208.70

CREDIT APPLICATION (TO QUALIFY, YOU MUST BE OVER 21, HAVE A STEADY INCOME & GOOD CREDIT RECORD)

FULL NAME: FUENTES MARGARITA | HOME PHONE | DATE | CREDIT LIMIT | APPROVED BY: L

STREET ADDRESS: 112 SW 11 AVE. | AGE | SINGLE ☐ MARRIED ☐ | CONTACT PHONE (IF OTHER THAN AT HOME) | WIFE'S NAME | NO. OF OTHER DEPENDENTS | MILITARY STATUS

CITY AND STATE | ZIP CODE | HOW LONG THIS ADDRESS | CHECK ONE: OWN HOME ☐ RENT ☐ BOARD ☐ | PREVIOUS ADDRESS (FILL IN IF AT PRESENT ADDRESS LESS THAN 2 YRS.) | HOW LONG THIS ADDRESS

NAME AND ADDRESS OF EMPLOYER | BUSINESS PHONE | HOW LONG WITH EMPLOYER | POSITION | MONTHLY SALARY OR WAGES: UNDER $300 SHOW AMOUNT ☐ | $300 $399 ☐ | $400 $499 ☐ | OVER $500 ☐ | PAY DAY

NAME AND ADDRESS OF PREVIOUS EMPLOYER (FILL IN IF WITH PRESENT EMPLOYER LESS THAN 2 YRS.) | HOW LONG EMPLOYED

NAME AND ADDRESS OF WIFE OR HUSBAND'S EMPLOYER | BUSINESS PHONE | HOW LONG WITH EMPLOYER | POSITION | MONTHLY SALARY OR WAGES: UNDER $300 SHOW AMOUNT ☐ | $300 $399 ☐ | $400 $499 ☐ | OVER $500 ☐ | PAY DAY

NAME AND ADDRESS OF RELATIVE WHO CAN REACH YOU

WHAT BROUGHT OUR STORE TO YOUR ATTENTION?

FIRESTONE CUSTOMER ☐ NEWSPAPER ☐ RADIO ☐ HANDBILL ☐ POSTCARD ☐ LETTER ☐ CATALOG ☐

MAKE AND YEAR OF CAR | IS CAR REGISTERED IN APPLICANT'S NAME YES ☐ NO ☐ | LICENSE NO. | YEAR

CAR FINANCED WITH | BALANCE OWING | AMT. OF MO. PAYMENTS

CREDIT BUREAU REPORT 3673 DATE 4/18 (file out) REC. BY

CREDIT REFERENCES

NAME OF REFERENCE	SOLD SINCE	HIGH CREDIT	OWING	PAYMENTS	PAST DUE	PAYS

MR. CUSTOMER:
YOU SET YOUR OWN CREDIT LIMIT

PLEASE CIRCLE BELOW:

FOR A MONTHLY PAYMENT OF:	YOUR BALANCE CAN BE:
5	50
10	150
13	200
15	300
20	400
25	500

PLEASE CIRCLE:
BEST PAYMENT DATE THAT FITS YOUR BUDGET.

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

CONTACT RECORD

DATE	NOTICE SENT	PHONE CALL	PERSONAL CALL	PROMISED PAYMENT	OTHER ACTION

UNI-CHARGE LEDGER RECORD

"GOOD PROSPECT FOR"

1 2 3 4 5 6 7 OTHER OTHER

8 9 10 11 12

ACCOUNT NO. 322-0141

OPEN LIMIT (USE PENCIL) 371-1477 3

TERMS

AMOUNT OF PAYMENTS

WHEN DUE

IS CONTRACT RECORDED OR FILED ☐

377-4463

NAME: Margarita Fuentes

ADDRESS: 412 S W 11 Ave

NEW ADDRESS:

PHONE

PAST DUE DATE	PAST DUE AMOUNT	DESCRIPTION OR CODE	P/F	DATE	REFERENCE NUMBER	REC. BY	PREVIOUS BALANCE	SALES		CASH PAYMENTS	BALANCE DUE
4/4											258 46
5/4		FILL 1981		4/2	76386	[illegible]	258 46		B	20 00	238 46
6/4		1981		4/10	70659	[illegible]	238 46		B	20 00	218 46
7/4	20 00			6/13	7629	[illegible]	218 46-8		BJ	10 00	208 46
	10 00			7/5	14235	[illegible]	208 46-6		BJ	12 00	196 46
8/4	12 00			8/8	20058	[illegible]	196 46		BJ	20 00	176 46
9-4	12 00	Void		9.19	20868	RR	176 46			5 00	171 46
				10-25	51344	RR	176 46		BJ	20 00	156 46
10-4				11-4	52261	RR	156 46		BJ	20 00	136 46
		12-2		12-16	4711	RR	136 46		BJ	20 00	116 46
10-4	18 00			1-16	50496	RR	116 46			20 00	96 46
11-4				2-27	53848	RR	96 46		BJ	20 00	76 46
12-4	18 00	9414	16	3.17	55381	RR	76 46		BJ	14 46	62 00
1-4				3-29	56330	BJ	62 00		BJ	60 00	2 00
2-4				3-30	56337	BJ	2 00			2 00	[illegible]
3-4				3-30	56408	BJ	[illegible]	516 25	BJ		491 25
4-24		1-54800A Cloth		4-5	56795	BJ	498 25		BJ	100 00	398 25
5-24		14 C 80.0		4-7	52104	BJ	398 25		BJ	100 00	298 25
5-24	178			4-21	54182	BJ	298 25		BJ	100 00	198 25
6-24		86 00		4-28	54675	BJ	198 25		BJ	60 00	138 25
7-24				5/11	57763	AF	138 25		BJ	14 00	124 25
8-24		7/A		6/2	54471	BJ	124 25			20 00	104 25
9-24		11% ND		6/3	54518	BJ	104 25			3 92	100 33
10-24				6/3	54519	BJ	100 33	(77 88)			22 45
11-24				6/21	53187	BJ	22 45		BJ	22 45	0
12-24		1-5C 206 Hood		6/21	53188	BJ	0	180 53			180 53
1-24	2 00	1968 Std		8/11	58999	[illegible]	180 53		BJ	11 00	169 53
		Pnd H C 70.67 (11)		9/12	50407	[illegible]	169 53		B	11 00	158 53
		BX 11		10/7	52541	[illegible]	158 53		BJ	11 00	147 53
		PD 9-2 11		11/3	41155	[illegible]	147 53		BJ	11 00	136 53
	88	10-1									
		11-2									

ofrecen a Rey $ 57.00 no aceptó pts.

BUDGET LEDGER RECORD

CREDIT APPLICATION

FORM S-1794 REV. 3-65

DATE | PHONE | (HOME OR CONTACT) | CREDIT LIMIT | APPROVED BY

FULL NAME | AGE | SINGLE / MARRIED | WIFE'S NAME | MILITARY STATUS | NUMBER OF DEPENDENTS

ADDRESS | HOW LONG | PREVIOUS ADDRESS (FILL IN IF AT PRESENT ADDRESS LESS THAN 2 YRS.) | HOW LONG | CHECK ONE: OWN HOME / RENT / BOARD

NAME AND ADDRESS OF EMPLOYER | BUSINESS PHONE | HOW LONG WITH EMPLOYER | POSITION | MONTHLY WAGES OR SALARY ☐ 300-399 ☐ 400-499 ☐ 500-699 ☐ 700 AND OVER | DATE PAID

NAME AND ADDRESS OF PREVIOUS EMPLOYER (FILL IN IF WITH PRESENT EMPLOYER LESS THAN TWO YEARS.) | HOW LONG EMPLOYED

NAME AND ADDRESS OF WIFE'S EMPLOYER | BUSINESS PHONE | HOW LONG WITH EMPLOYER | POSITION | MONTHLY WAGES OR SALARY ☐ 200-299 ☐ 300-399 ☐ 400 AND OVER | DATE PAID

MAKE AND YEAR OF CAR | IS CAR REGISTERED IN APPLICANT'S NAME? YES ( ) NO ( ) | LICENSE NUMBER

BANK OR FINANCE CO. | BALANCE OWING | AMT. OF MO. PMTS.

CREDIT REFERENCES

NAME AND ADDRESS OF RELATIVE

CREDIT BUREAU REPORT DATE REC. BY

NAME OF REFERENCE	SOLD SINCE	HIGH CREDIT	OWING	PAYMENTS	PAST DUE	PAYS

MR. CUSTOMER:

YOU SET YOUR OWN CREDIT LIMIT

PLEASE CIRCLE BELOW

FOR A MONTHLY PAYMENT OF:	YOUR BALANCE CAN BE:
5	50
10	150
13	200
15	300
20	400
25	500

PLEASE CIRCLE

BEST PAYMENT DATE THAT FITS YOUR BUDGET.

1 2 3 4 5 6 7
8 9 10 11 12 13 14
15 16 17 18 19 20 21
22 23 24 25 26 27 28
29 30

MEDIUM OF PURCHASE (CHECK ONE) FRIEND NEWSPAPER RADIO HANDBILL POSTCARD LETTER CATALOG

CONTACT RECORD

DATE	NOTICE SENT	PHONE CALL	PERSONAL CALL	PROMISED PAYMENT	OTHER ACTION

OTHER PAYMENTS

BUDGET LEDGER RECORD

WEEKLY PAYMENTS

WEEKLY PAYMENTS — OTHER PAYMENTS

PROSPECT FOR	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
DATE CONTACTED															

TERMS	1ST SALE	2ND SALE	3RD SALE	4TH SALE
AMOUNT OF PAYMENTS	10.00	X	10	18.00
WHEN DUE	3/64	X	4th	4th
IS CONTRACT RECORDED OR FILED ☐		DATE		

NAME: Margarita Fuentes 1125 SW 11 St.

ADDRESS: ~~137 ... Ave~~ ~~1125 SW 11 St~~

NEW ADDRESS: 42 SW 11 Ave

PHONE: 377-0141

PAST DUE DATE	PAST DUE AMOUNT	DESCRIPTION OR CODE	DATE	REFERENCE NUMBER	REC. BY	PREVIOUS BALANCE	SALES		CASH PAYMENTS	BALANCE DUE
3-4	✓	4882 T.V. Console	2-1	49438	S	-0-	245 87			245 87
4-4	—	Service Policy	[illegible]	[illegible]		245 87			10 -	235 87
5-4	—	[illegible]	-3	[illegible]		235 87			10 -	225 87
6-4	—		-30	61[illegible]		225 87			10 -	215 87
7-4			-3	33825		215 87			10 -	205 87
8-4									10 00	195 87
9-4			8-4	67490	JM	195 87			10 00	185 87
			9-11	68563	JM	185 87		B.G.	10 00	175 87
10-4			10-3	3465	[illegible]	175 87		B.G.	10 -	165 87
11-4			11/3	5666	[illegible]	165 87		B.G.	10 00	155 87
12-4	✓		12/3	FD1734	JM	155 87			10 00	145 87
1-4			1/7/66	27786	[illegible]	145 87			10 00	135 87
2-4		[illegible]	1-2	25171	R	135 87	388 83		10 00	514 70
3-4		16RD55 Returned to stock	1-5	25401	R	514 70	(365 58)			149 12
			2-2	25277	JM	149 12		B.G.	10 00	139 12
4-4		A/C [illegible] 14AJ5 Toaster	2-5	25609	K	139 12	27 54			166 66
5-4		Look out along the way	3-2	27303	JM	166 66			10 00	156 66
6-4			3/30/66	46295	D.G.	156 66		B.G.	10.00	146 66
7-4			5/3	80699	[illegible]	146 66		B.G.	10 -	136 66
8-4			6/3	82749	SS	136 66		B.G.	10 00	126 66
9-4			7/2	43828	[illegible]	126 66		B.G.	10 00	116 66
10-4			7/31	96715	D.G.	116 66			10 00	106 66
11-4		$70 deposit	7/31	96717	D.G.	106 66	D.P.		70 00	36 66
12-4		16RM44 [illegible] H/c 65.30	7/31	96719	D.G.	36 66	381 80	B.G.		418 46
1-4		to 11V Sec. 11th [illegible]	9/1	98873	D.G.	418 46		B.G.	30 00	388 46
[illegible]			10/7	77179	JM	388 46		B.G.	30 00	358 46
2-4		[illegible]	11/4	79241	D.G.	358 46			20 00	338 46
3-4		DEC 31 1965	12/1	81420	[illegible]	338 46			20 00	318 46
4-4			1/4/66	83472	D.G.	318 46		B.G.	20 00	298 46
			2/12	11124	[illegible]	298 46		B.G.	20 00	278 46
			3/11	68957	[illegible]	278 46		B.G.	20 00	258 46

HAVE YOU GOT YOUR COLOR TV YET ??
YES ____ NO ____ DEMONSTRATION DATE ____

Forward

S-1794-REV.-10-62-300M. BUDGET LEDGER RECORD

CREDIT APPLICATION

FORM 91796

DATE 1-31-64 PHONE 3770141 (HOME OR CONTACT) CREDIT LIMIT [redacted] APPROVED BY GAB (8)

FULL NAME Margot Fuentes AGE 49 SINGLE ✓ MARRIED WIFE'S NAME DIV. MILITARY STATUS NUMBER OF DEPENDENTS 1

ADDRESS 137 S.W. 10 AVE. Miami-Fla HOW LONG 5 Mos PREVIOUS ADDRESS (FILL IN IF AT PRESENT ADDRESS LESS THAN 2 YRS.) HOW LONG CHECK ONE: OWN HOME RENT ✓ BOARD

NAME AND ADDRESS OF EMPLOYER Genete of Miami Appil factory BUSINESS PHONE 6348496 HOW LONG WITH EMPLOYER 1½ yrs POSITION Sewing WAGES OR SALARY: AMT. WEEKLY 60.00 wk AMT. MONTHLY DATE PAID ON WHAT DAY

NAME AND ADDRESS OF PREVIOUS EMPLOYER (FILL IN IF WITH PRESENT EMPLOYER LESS THAN TWO YEARS.) 6348496 HOW LONG EMPLOYED

NAME AND ADDRESS OF WIFE'S EMPLOYER None BUSINESS PHONE HOW LONG WITH EMPLOYER POSITION WAGES OR SALARY: AMT. WEEKLY AMT. MONTHLY DATE PAID ON WHAT DAY

MAKE AND YEAR OF CAR None IS CAR REGISTERED IN APPLICANT'S NAME? YES (✓) NO ( ) LICENSE NUMBER

BANK OR FINANCE CO. BALANCE OWING AMT. OF MO. PMTS.

CREDIT REFERENCES

~~Ex. Shell~~

Ideal Trading Co. Inc.

F(30683

CREDIT BUREAU REPORT (Ok) DATE 2-1-64 REC. BY [illegible]

NAME OF REFERENCE	SOLD SINCE	HIGH CREDIT	OWING	PAYMENTS	PAST DUE	PAYS
Verif Employment						Very Good
Ideal	3/63	128.75	5.00	10.00 wk		Very Good
Ideal Trading Co.	10/62	95.08	-0-	10.00 wk		Very Good
Inc. Sewing Mach	12/63	40.17	-0-	10.00 wk		Very Good

NAME AND ADDRESS OF RELATIVE

Joaquin Leon 1275 S.W. 1 St Miami Fla 10.00

MEDIUM OF PURCHASE: (CHECK ONE) FRIEND NEWSPAPER RADIO HANDBILL POST CARD LETTER CATALOG

CONTACT RECORD

DATE | NOTICE SENT | PHONE CALL | PERSONAL CALL | PROMISED PAYMENT | OTHER ACTION

OTHER COMMENTS

12/14 (1) To both

10/21 TPO R[illegible]

BUDGET LEDGER RECORD

OTHER PAYMENTS

WEEKLY PAYMENTS

"GOOD" PROSPECT FOR

1 2 3 4 5 6 OTHER 7 OTHER

8 9 10 11 12

ACCOUNT NO. #2 7.

OPEN LIMIT (USE PENCIL)

TERMS	1ST SALE	2ND SALE	3RD SALE	4TH SALE
AMOUNT OF PAYMENTS	9.00 a month			
WHEN DUE	30th			
IS CONTRACT RECORDED OR FILED ☐	DATE			

NAME: Margarita Fuentes

ADDRESS: 1275 SW 1 street

NEW ADDRESS:

PHONE 377-4163

PAST DUE DATE	PAST DUE AMOUNT	DESCRIPTION OR CODE	P/F	DATE	REFERENCE NUMBER	REC. BY	PREVIOUS BALANCE	SALES	CASH PAYMENTS	BALANCE DUE
11-30	2.50	1-9A225 bike		10/31	79029	Dm	-0-	182 20	2 80	98 00
12-30	[illegible]	1-9A275 bike		11/16	79526	Dm	98 00	Hy	2 50	95 50
1-32	[illegible]	H/C 9.00		11/30	8045	Dm	95 50	Hy	5 00	90 50
2-7				12/13	81332	Dm	90 50	Hy	5 00	85 50
				12/11	81908	Dm	85 50	Hy	2 50	83 00
2-30 [illegible]		DEC 31 1965		12/27	83065	Dm	83 00	Hy	5 00	78 00
3/30				1.14	84230	DK	78 00	Hy	5 00	73 00
4/30		3.20		1/29	80112	U.U.	72 00	Hy	5 00	68 00
5/30		IIIIIIIII = 90.00		2/19	11587	U.U.	68 00	Hy	5 00	63 00
6/30		Pay		2/28	68083	Dm	63 00	Hy	5 00	58 00
7/30				3/26	70003	U.U.	58 00	Hy	10 00	48 00
8/30		10.00 - 90.00 / 10.00 / 10.00		4/2	70383	U.U.	48 00	B	10 00	38 00
9/30				4/16	72400	U.U.	38 00	Hy	10 00	28 00
				8-13	18133	Bl	28 00	Hy	28 00	-0-

S-1794-REV.-10-64

BUDGET LEDGER RECORD

CREDIT APPLICATION

FORM 8176

DATE 10/31/65 PHONE 3770141 (HOME OR CONTACT) 373-3578 CREDIT LIMIT 150 APPROVED BY [illegible]

FULL NAME Margot Fuentes AGE 50 SINGLE MARRIED WIFE'S NAME Leon MILITARY STATUS NUMBER OF DEPENDENTS 1

ADDRESS 1275 SW 1 Street HOW LONG 2 years PREVIOUS ADDRESS (FILL IN IF AT PRESENT ADDRESS LESS THAN 2 YRS.) 137 SW 10 Ave. HOW LONG 5 m CHECK ONE: OWN HOME RENT X BOARD Daughter

NAME AND ADDRESS OF EMPLOYER Jewelry of Miami BUSINESS PHONE 634 8496 HOW LONG WITH EMPLOYER 3 years POSITION Sewing WAGES OR SALARY AMT. WEEKLY 60.00 AMT. MONTHLY DATE PAID ON WHAT DAY

NAME AND ADDRESS OF PREVIOUS EMPLOYER (FILL IN IF WITH PRESENT EMPLOYER LESS THAN TWO YEARS.) HOW LONG EMPLOYED

NAME AND ADDRESS OF WIFE'S EMPLOYER None BUSINESS PHONE HOW LONG WITH EMPLOYER POSITION WAGES OR SALARY AMT. WEEKLY AMT. MONTHLY DATE PAID ON WHAT DAY

MAKE AND YEAR OF CAR None IS CAR REGISTERED IN APPLICANT'S NAME? YES ( ) NO ( ) LICENSE NUMBER

BANK OR FINANCE CO. BALANCE OWING AMT. OF MO. PMTS.

CREDIT REFERENCES
Ideal trading
Firestone Stores

CREDIT BUREAU REPORT DATE 10/31/65 REC. BY [illegible]

NAME OF REFERENCE	SOLD SINCE	HIGH CREDIT	OWING	PAYMENTS	PAST DUE	PAYS
Verified employment				very good		
Ideal	2/63	128.25	5.00	10 a week		Very Good
Ideal Trading	11/62	95.00	0	10 a week		Very Good
Inc. Sewing	12/63	40.17	0	10 a week		Very Good

NAME AND ADDRESS OF RELATIVE Joaquin Leon 1275 SW 1 Street.

MEDIUM OF PURCHASE: (CHECK ONE) FRIEND NEWSPAPER RADIO HANDBILL POST CARD LETTER CATALOG

BUDGET LEDGER RECORD

OTHER COMMENTS

CONTACT RECORD

DATE	NOTICE SENT	PHONE CALL	PERSONAL CALL	PROMISED PAYMENT	OTHER ACTION
1/11	1				
1/6	1	Statement [illegible] 20.02			
2/4	2				
2/27		sent PP 3/1/67			
3/8	1				
3/14	2				

OTHER PAYMENTS

WEEKLY PAYMENTS

GOOD PROSPECT FOR	1	2	3	4	5	6 OTHER	7 OTHER	OPEN LIMIT (USE PENCIL)
	8	9	10	11	12			

TERMS	1ST SALE	2ND SALE	3RD SALE	4TH SALE	NAME [illegible] Fuentes	PHONE
AMOUNT OF PAYMENTS					ADDRESS 112 [illegible] 11 Ave. - Miami - Fla.	
WHEN DUE						
HANDLING CHARGE					NEW ADDRESS	
NO MONTHS						

PAST DUE DATE	PAST DUE AMOUNT	DESCRIPTION OR CODE	P/F	DATE	REFERENCE NUMBER	REC. BY	PREVIOUS BALANCE	SALES	CASH PAYMENTS	BALANCE DUE

CREDIT APPLICATION (TO QUALIFY, YOU MUST BE OVER 21, HAVE A STEADY INCOME & GOOD CREDIT RECORD) 3773673

FULL NAME: Margot Fuentes
HOME PHONE: 37[illegible]
DATE: 3-29-67
CREDIT LIMIT: 495
APPROVED BY: GSR

STREET ADDRESS: 112 SW 11 Avenue
AGE: 51
SINGLE / MARRIED: DIV.
CONTACT PHONE (IF OTHER THAN AT HOME)
WIFE'S NAME: —
NO. OF OTHER DEPENDENTS: 1
MILITARY STATUS: —

CITY AND STATE: Miami - Fla.
ZIP CODE
HOW LONG THIS ADDRESS: 1/2 y.
CHECK ONE: OWN HOME ☐ RENT ☒ BOARD ☐
PREVIOUS ADDRESS (FILL IN IF AT PRESENT ADDRESS LESS THAN 2 YRS.)
HOW LONG THIS ADDRESS

NAME AND ADDRESS OF EMPLOYER: Mr. Dino - Pantop
BUSINESS PHONE: 6350771
HOW LONG WITH EMPLOYER: 1 y.
POSITION: Mach. op. Sew. [illegible]
MONTHLY SALARY OR WAGES: UNDER $200 SHOW AMOUNT $ ☐ $200–$300 ☒ $400–$400 ☐ OVER $500 ☐
PAY DAY: Every week.

NAME AND ADDRESS OF PREVIOUS EMPLOYER (FILL IN IF WITH PRESENT EMPLOYER LESS THAN 2 YRS.): Genie of Miami
HOW LONG EMPLOYED: 3 1/2 y.

NAME AND ADDRESS OF WIFE OR HUSBAND'S EMPLOYER: —
BUSINESS PHONE: —
HOW LONG WITH EMPLOYER: —
POSITION: —
MONTHLY SALARY OR WAGES: UNDER $200 SHOW AMOUNT ☐ $200–$300 ☐ $400–$400 ☐ OVER $500 ☐
PAY DAY: —

NAME AND ADDRESS OF RELATIVE WHO CAN REACH YOU: Joaquin Leon - 1275 SW 1 street

WHAT BROUGHT OUR STORE TO YOUR ATTENTION? FIRESTONE CUSTOMER ☐ NEWSPAPER ☐ RADIO ☐ HANDBILL ☐ POSTCARD ☐ LETTER ☐ CATALOG ☐

MAKE AND YEAR OF CAR: —
IS CAR REGISTERED IN APPLICANT'S NAME: YES ☐ NO ☐
LICENSE NO.: —
YEAR: —

CAR FINANCED WITH: —
BALANCE OWING: —
AMT. OF MO. PAYMENTS: —

CREDIT REFERENCES:
Ideal Trading 3730683
Firestone Store (FLAGLER).
Sue. Sewing

CREDIT BUREAU REPORT — DATE 3773673 — REC. BY [illegible]

NAME OF REFERENCE	SOLD SINCE	HIGH CREDIT	OWING	PAYMENTS	PAST DUE	PAYS
C/B no file -						
Ideal Trading (dir.)	2-63	128.75	0	10.00 week		Very Good
Ideal Trading (direct)	10-62	95.00	0	10.00 week		Very Good
Cel. payment verified direct with Miss [illegible]						

MR. CUSTOMER:
YOU SET YOUR OWN CREDIT LIMIT
PLEASE CIRCLE BELOW:

FOR A MONTHLY PAYMENT OF:	YOUR BALANCE CAN BE:
5	50
10	150
13	200
15	300
20	400
25	500

PLEASE CIRCLE:
BEST PAYMENT DATE THAT FITS YOUR BUDGET.

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

CONTACT RECORD

DATE	NOTICE SENT	PHONE CALL	PERSONAL CALL	PROMISED PAYMENT	OTHER ACTION
8/9	(1)				
9/[illegible]	(2)				
10/[illegible]	(2)				
11/9	(1)				
11/[illegible]	(1)				
12/6	(1)				
12/13	(2)				

UNI-CHARGE LEDGER RECORD

FIRESTONE EXHIBIT 2

Firestone STORES

1200 West Flagler Street
MIAMI, FLORIDA

CREDIT DEPARTMENT

_____

_____

_____

ur payment of $_____ was due _____.

ssibly you overlooked sending us your remittance.

you have already sent us this payment, please accept our thanks,
not, we would appreciate your prompt remittance.

748

FIRESTONE EXHIBIT 3

Firestone STORES

1200 West Flagler Street
MIAMI, FLORIDA

CREDIT DEPARTMENT

OVERDUE $_____

e recently sent you a reminder of the amount due on your unt but our records indicate that we have not been favored your remittance.

e will greatly appreciate your giving this your preferred attention.

GOOD CREDIT IS A VALUABLE ASSET

750

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 436670 702

Supreme Court of the United States

No. 6060 ----- , *October Term, 19* 70

Margarita Fuentes, et al.,

Appellants,

v.

Earl Faircloth, Attorney General of Florida, et al.

APPEAL from the United States District Court for the Southern District of Florida.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 22, 1971

No. 70-5039

Brief, amicus curiae, of National Legal Aid & Defender Assoc. filed June 14, 1972. NOT PRINTED.

Brief of The National Consumer Law Center and the Urban Law Institute, amici curiae, filed Oct. 12, 1971. NOT PRINTED.